

# **STAFFORD COUNTY PLANNING COMMISSION**

***April 21, 2010***

The meeting of the Stafford County Planning Commission of Wednesday, April 21, 2010, was called to order at 6:32 p.m. by Vice-Chairman Peter Fields in the Board of Supervisors Chambers of the County Administrative Center.

MEMBERS PRESENT: Fields, Rhodes, Hazard, Mitchell, Kirkman and Hirons

MEMBERS ABSENT: Howard

STAFF PRESENT: Harvey, Roberts, Stinnette, Zuraf and Hornung

## DECLARATIONS OF DISQUALIFICATION

Mr. Fields: Are there any declarations of disqualification? Alright, hearing none, most of our unfinished business items are deferred; Redevelopment Area Plans to May 5<sup>th</sup>, Groundwater Management Ordinance to May 5<sup>th</sup>, Reservoir Protection to May 19<sup>th</sup>. Is there anything to report on the Amendments to the Comprehensive Plan from any members of the Comp Plan Committee?

## UNFINISHED BUSINESS

1. Redevelopment Area Plans - Boswell's Corner, Courthouse Road, Southern Gateway and Falmouth Village (Southern Gateway and Falmouth Village in Committee - Peter Fields and Scott Hirons) **(Deferred to May 5, 2010)**
2. Groundwater Management Ordinance **(Deferred to May 5, 2010)**
3. Reservoir Protection Overlay District **(Time Limit: January 29, 2010) (Deferred to May 19, 2010)**
4. Amendments to the Comprehensive Plan **(Time Limit: June 1, 2010) (In Comp Plan Committee)**

Mrs. Hazard: Mr. Vice-Chairman, we are resuming our meetings on Thursday evenings; we've gotten through a good portion of it and we are also awaiting the reports from the Land Use portion. That is a co-meeting with the Board of Supervisors and with the Planning Commission meeting.

Mr. Fields: Okay.

Ms. Kirkman: Mr. Chair? Weren't there some joint Board and Planning Commission committee meetings held since our last Board meeting... I mean our last Commission meeting?

Mr. Fields: I believe there was. I was not able to attend. Mr. Hirons was there, I believe.

Mr. Hirons: Yes. There was one two weeks ago, a week ago... the Board obviously has been tied up with the budget. The expectation is they are going to have a little bit more time now and try to focus on the coming weeks.

Mr. Fields: But there was a meeting, correct?

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Mr. Hirons: Yes.

Mr. Fields: On Saturday.

Mr. Hirons: Yes.

Mr. Fields: Anything to report from that?

Mr. Hirons: No, it was actually a little bit more of an organizational meeting and trying to figure out what our role was.

Ms. Kirkman: So, just to clarify, there were two...

Mr. Fields: There was a document that came out of that meeting.

Ms. Kirkman: Mr. Chair, if I could, there were two joint committees...

Mr. Hirons: No, there's one joint committee and one committee of just Planning Commission members and the committee with the Planning Commission members are primarily focusing on the verbiage of the Comp Plan itself. The joint committee is focused on the Land Use side of the Comp Plan.

Ms. Kirkman: And that's the committee that met on the Saturday morning?

Mr. Hirons: Yes.

Ms. Kirkman: And there was no discussion of content or UDA's or anything like that?

Mr. Hirons: There was some and there was a document that was circulated. I didn't take that document as an official output of the committee itself; it was something that was produced by at least one member of the committee. And my assumption is it's something that's going to be discussed at the next meeting of that joint committee.

Ms. Kirkman: And I have a couple of follow-up questions. May I Mr. Chair?

Mr. Fields: Yes, please.

Ms. Kirkman: So, when's the next meeting of that committee?

Mr. Hirons: It hasn't been scheduled yet. Mr. Harvey, you haven't heard if they've scheduled yet, have you?

Mr. Harvey: I have not heard a new date.

Mr. Hirons: We're kind of taking a lead of... or letting the Board members kind of take the lead on scheduling those meetings, primarily because they've been so tied up with the budget.

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Ms. Kirkman: Well, apparently being tied up with the budget didn't get in the way of preparing a draft document. Was that prepared by the Board?

Mr. Hirons: No, it was... I'm not sure how I received it. I guess I received it from Mr. Sterling, I'm not sure. And it seemed to be more of an input for the next meeting as opposed to an official output from the last meeting.

Ms. Kirkman: Mr. Harvey, were you present at this meeting?

Mr. Harvey: No ma'am.

Ms. Kirkman: Oh. Was any staff there?

Mr. Harvey: No staff was present. We were advised that it wasn't necessary that staff be there.

Ms. Kirkman: Really? Okay. Thank you Mr. Chair.

Mr. Fields: Alright. I apologize that I wasn't able to be there. Unfortunately I didn't know about it until Wednesday before and that's right in the meat of my busiest time of the week. Seven-thirty on a Saturday was not a possibility for me. Alright. So, Mr. Hirons, you're saying that you're anticipating that there will be another meeting of that committee at some point?

Mr. Hirons: I would hope so. I will be honest with you, it's been a little bit of pulling teeth to get the Board members to even focus on it or deal with it and I've been told now that they're done with the budget, they are committed to focus on it and schedule any future meetings. I have not heard as of yet when the meetings will be scheduled. Both the Chairman of the Planning Commission and the Chairman of the Board of Supervisors serve on that subcommittee so I would defer to them to any scheduling requests or any scheduling of those meetings that may be happening or going on.

5. Elimination of the Preliminary Subdivision Plan Process (**Awaiting Comments from VDOT**)
6. Rappahannock River Overlay District and Potomac River Overlay District (Referred back by Board of Supervisors) (**Time Limit: October 6, 2010**) (**Deferred to May 5, 2010**)
7. CUP2900084; Conditional Use Permit - White Oak Car Wash - A request for a Conditional Use Permit to allow a car wash within a B-1, Convenience Commercial Zoning District, on a portion of Assessor's Parcel 54-59 consisting of approximately 3.65 acres, located on the south side of White Oak Road at Southside Drive and Potomac Avenue within the George Washington Election District. This development would include a full service car wash within a building approximately 6,000 square feet in size. (**Time Limit: July 6, 2010**) (**Deferred for meeting with applicant, VDOT and Mr. Fields**)

Mr. Fields: Alright. Okay, the Conditional Use Permit on the White Oak Car wash, we were actually supposed to have a meeting today but it was pouring down rain and everybody decided that... actually staff suggested that trying to meet on site and look at piles of drawings and diagrams in the rain wasn't best. They suggested that we just meet at the VDOT offices. I asked to reschedule because I don't really, I'm not really interested in looking at yet again another set of drawings in a room; I can do that at home. I'm at the point, for me, from the representative of that district, that I need to walk around on

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the property inch by inch with the drawings and Generalized Development Plan and look at the traffic issues right there. So, we've rescheduled and I think we're going to try to meet again on Monday, weather permitting. So, that's where we are on that. Okay, I think that takes us through unfinished business. The next item is new business, discussion of medical and dental clinics definitions.

Mr. Harvey: Mr. Chairman, staff did provide additional information for item 5, the elimination of preliminary subdivision plans.

Mr. Fields: Oh, I'm sorry. I see.

Mr. Harvey: We had been waiting for information from VDOT regarding their comments. We have not received any formal correspondence on letterhead; we did receive an email response from Mr. Hamrick at VDOT regarding the elimination of preliminary plans. It's his feeling that doing so would not be in the best interest for long term planning and may pose some conflicts for future development.

Mr. Fields: Okay. Are there any questions on this item? Okay. Alright, now we're on to new business?

Mr. Harvey: We can be.

Mr. Fields: Okay. I think we probably need to be. I think that's all the unfinished business... I mean, are we missing any unfinished business?

Mr. Harvey: No sir.

Mr. Fields: Okay, thanks.

NEW BUSINESS

8. Discussion of Medical and Dental Clinics Definitions

Mr. Harvey: With the new business of medical and dental clinics, we have provided you with the information that was referred to you by the Board of Supervisors. My estimation, based on when they referred it to you, you would need to make a recommendation by July 2<sup>nd</sup>. As you recall, when we were going through the public hearing process on whether to allow medical and dental clinics as by-right or conditional uses in the B-2 zones, there were some questions about the definition of medical and dental clinics and that issue was raised by the Commission and forwarded to the Board. And the Board took heed of your recommendation and has brought back the following ordinance. They also allowed the Commission to make any modifications as it deems necessary.

Ms. Kirkman: Mr. Chair? What exactly was the issue that was referred to the Board by the Planning Commission in terms of the definition?

Mr. Harvey: The Commission felt that the definitions needed to be modified to be more inclusive, because changes in medical practice, we have a lot more differing and wider variety of medical practitioners today than what our definition had previously allowed. So, this new amendment would be a bit more inclusive of who would be qualified as a medical or dental clinic and what other activities would be a medical or dental office.

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Ms. Kirkman: And the Commission made that recommendation?

Mr. Fields: That's correct. As I recall, I think I was sort of one of the people that really pushed that issue. Partly, it's just a personal intersection since my wife is a yoga teacher and involved in lots of alternative therapies and modalities that the definition we had before was tightly restrictive to exactly, at least according to the County Attorney's advice at the time, it was worded in such a way that only those professions explicitly listed in the ordinance were covered under the ordinance. And I felt that we live in a world where things change and practices change and there's lots of things out there and I didn't want to be completely exclusive of any type of alternative or complementary medical therapeutic practices from being listed in there. I think that's my recollection of what drove my questioning of it I believe. I don't know that there are other issues as well. Do you recall? That's my recollection that I was one of the ones that raised that issue.

Mr. Harvey: Yes sir, that's my recollection as well. And we have, in the attachment for item number 8, we have the ordinance that the Board referred back to you. Again, the Commission can make modifications as it deems necessary pursuant to the Resolution that referred it to you. So, I guess the question for the Commission would be is this proposed ordinance conclusive enough, meets what you think is appropriate for the definition of medical and dental clinics? Also, we further defined "principal health care provider" and "other health care provider".

Ms. Kirkman: So that would include non-licensed health care providers.

Mr. Fields: Yes, as other health care providers.

Mr. Harvey: Yes.

Ms. Kirkman: So, anyone could call themselves a health care provider and be included?

Mr. Fields: That's an interesting question and I certainly understand what you're saying. Some types of practices don't offer licensing in the Commonwealth of Virginia. Even if you wanted to be licensed in it, you can't be licensed in it; a lot of the alternatives. So I think that's certainly what I'm getting at. I wouldn't want to exclude anybody that was offering a service that some people found valuable simply because the Commonwealth of Virginia didn't recognize that modality of therapy and didn't provide a State Licensing Board.

Mrs. Hazard: As I read the "other health care provider" language though, it does say that it is under the supervision of a principle health provide which assumes to me that someone has a license.

Ms. Kirkman: Not unless it states they're licensed.

Mrs. Hazard: But when they say it's under the supervision of a principle health care provider, the language of the "principal health care provider" says a health care professional licensed to operate, is how I'm reading this. Just so we should make sure if we are looking at unlicensed, these two definitions seem to go together, that there is licensing at least of the principle and then the "other health care provider" is operating, as I see it, under that person. So there is some accountability from a licensing perspective. Is that the correct reading or no?

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Mr. Harvey: I believe that's correct. That was one point, I guess getting to Mr. Fields' question, if someone was practicing in a field where it wasn't necessarily licensed and they didn't meet the definition of a principle health care provider, they would have to fall under just a general office category; they wouldn't necessarily be able to fit under medical office or medical and dental clinic.

Mr. Hirons: However, that unlicensed professional, although he or she may be... and I apologize Mr. Chairman; if I could have time.

Mr. Fields: Sure, please.

Mr. Hirons: The way I read this is the health care professional, the unlicensed person, may be under supervision of a licensed provider but that licensed provider does not have to work within that facility or that medical/dental space.

Ms. Kirkman: Could someone show me where it says that? Because, for instance...

Mr. Fields: Well, under the supervision, who may provide patient care under the supervision of a principle health care provider. It says it shall include nurse practitioners, registered or licensed practical nurses, physician's assistant, dental hygienist, or similar Commonwealth of Virginia licensed or certified medical professions. Do you feel that does not clearly say provide under the supervision?

Ms. Kirkman: No, I'm not saying the supervision, but my colleague has stated that they wouldn't necessarily have to be part of the practice or even on site.

Mr. Fields: I see.

Ms. Kirkman: And that actually runs counter to a lot of regulatory requirements. For instance, if you look at the Medicare requirements regarding supervision, physician supervision, of various procedures, there is distance requirements, that sort of thing. So, I didn't know that that was assumed in this definition. Another thing is it does seem like, Mr. Fields, if the concern is that the current definition doesn't allow the practice of alternative therapies, I don't see how this is going to meet that need given that it's requiring supervision by a licensed professional.

Mr. Fields: Well, there are different layers of arrangements. Some people that do that, do that in a complementary way. So, would you prefer to... what is your suggestion Ms. Kirkman? What would you like to see changed?

Ms. Kirkman: I wasn't involved in the formulation of this. I don't... I'm just pointing out that I'm not sure that this meets what you had hoped it would accomplish.

Mr. Fields: Sure.

Ms. Kirkman: I did have a question for Mr. Harvey though. Really it was great to see the Board support women's right to choose by ensuring that abortion clinics and Planned Parenthood are now a by-right use in these areas. And I just want to inquire, does this do anything to limit the existence of those types of providers within the definition?

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Mr. Harvey: I don't believe it would because again it talks about a primary principle health care provider and a physician would be a principle health care provider.

Ms. Kirkman: Okay, thank you.

Mr. Fields: So, are you suggesting that you would like to see a recommendation about the supervision requiring proximity or on-site or something like that? You're making the point, which is an interesting and valid point; I was just wondering are you suggesting that we amplify the language or change the language somehow to accommodate or make clearer that there is a physical connection in space between the person working under the supervision of a licensed practitioner?

Ms. Kirkman: All I'm saying is that typically there's a definition of what supervision means. Sometimes that definition has to do with the ability to intervene immediately should the physician need to step in and take over the procedure, sometimes it has to do with physical location, sometimes it has to do with separation of space, sometimes it has to do with who owns the building; but usually there is a definition of what constitutes supervision. And if the Commission wishes to move forward on this, I would suggest that a definition of supervision be included in the Ordinance.

Mr. Fields: Okay.

Mrs. Hazard: Mr. Chair, can I ask a question? On the part about office, when it has medical/dental, should we make that consistent with including psychiatric in terms of office to parallel it with our clinic definition? Because it appears it says office, medical/dental but then we also say for a medical, dental or psychiatric... it just seems that it would make it consistent.

Mr. Fields: Yeah, because it says in the text... it's really just kind of a typographic thing because it says in the text for a medical, dental or psychiatric practice. Office we have clinic and then... yeah, the language is just parallel so the title, the heading, should probably be parallel, right? Office, medical, dental or psychiatric, just like in clinic? Does that make sense? That's what you're saying, right?

Mrs. Hazard: Yes. It just seems that we have broadened the clinic definition to include psychiatric and we have clearly broadened the definition in office, why not make it parallel.

Mr. Fields: I agree. Does anybody have any problem with that? Making the heading of office parallel with the heading of clinic? Did you get that guys, staff?

Mr. Harvey: Yes.

Mr. Fields: Any thoughts about the definition of supervision? It's a good point. I mean, this gets complicated as you keep expanding it, but if you want to have meaning it does need to probably be defined since supervision has lots of contexts. Was that language thought about or the implications of the meaning of the word supervision? Is there a standard common usage that you've seen in these types of ordinances or do we need to probably think about what that means? We want to try to get this tightened up all the way.

Mr. Harvey: I'm not sure that there was any understanding that there would be a question or to be resolved, but Ms. Kirkman raised some good issues in that you've got proximity versus an actual supervisory role from say boss to employee in a situation that you have to consider.

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Mr. Fields: Her point, particularly in medical things I think is well taken, but supervision may also mean the ability to intervene at a higher level of medical expertise if something goes awry. Which certainly implies and, I don't know, maybe ask the County Attorney, since we're talking about things that have potentially large liabilities, do we need to think about defining supervision so that someone can't hide in the rather loosely defined Code of Stafford while being irresponsible in their application of that practice of supervision?

Mrs. Roberts: And I think Ms. Kirkman brought up a good point. It did not come up. Mr. Stepowany is not here but he worked hard and we looked at the definitions for these from Zoning Ordinance books or the thesauruses... I don't know what you call them... and we also looked at other localities and we tracked the language and didn't think about that. So that might be something we want to define, is what is supervision.

Mr. Fields: Okay. Well, without... I don't think we need to take a vote, but what would be the consensus? Does anybody have a problem with asking staff to look further into the term supervision? Any objections to it? Okay.

Mrs. Hazard: Mr. Chairman, I just have one final comment on this and I don't know if this muddies the water.

Mr. Fields: There's no time limit on comments.

Mrs. Hazard: In the definitions that we've set out with the clinic and the office, as we examine that definition, especially talking about supervision, when we have the definition "including a total of not more than the full time equivalent of two principle health care providers and two other health care providers, exclusive of administrative or clerical staff, providing services on the premises", perhaps there was an underlying belief that those were going to be related services. That the principle and those other two health care providers were acting in concert. But, I'm not sure; that may be a stretch and I'm just trying to make sure I understand if we were looking at this if we were assuming that there were two principle health care providers and two other health care providers that we were thinking they were all in one office. But maybe that's a way to also be looking at that definition of if that's what we're saying, we can maybe tighten it. But if we're not saying that, if we're saying that there can be other health care providers providing services that are not related to the principle health care providers. Does that make it muddier or worse?

Mrs. Roberts: I totally understand what you're saying; as a fellow attorney, muddy the waters. But I think the definitions are clear. We're talking about within the office or within the clinic.

Mr. Fields: Okay. Alright, so I think we're going to ask staff to look at the context of supervision, what that means, particularly in the context of medical, dental or psychiatric offices; what supervision means or doesn't mean. Ms. Kirkman, if you have any input, you might want to email it to staff. You work in the medical field more so that's... I mean, I know that you have a level of expertise on it.

Ms. Kirkman: So, I think the attorney asked... it may be the basic approach to the definition may have a fatal defect in it by referencing supervision because I don't know that the Planning Commission or the Board of Supervisors has the ability to regulate medical professions by defining supervision. So, that's the first issue. The second issue that I would raise, again, Mr. Fields, I don't know that this will



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do anything to accomplish what you had hoped to accomplish given that it requires supervision, the definition requires supervision by a licensed professional.

Mr. Fields: I understand.

Ms. Kirkman: So, those are the only two comments.

Mr. Fields: Okay.

Mrs. Roberts: Mr. Chairman, if I could respond, I actually totally agree that any definition of supervision would have to track the State Code regarding health care, etcetera.

Mr. Fields: That's a good point. That may not even be something that we have the right to define or the authority to define as a land use matter. Probably not would be my guess. Alright, anymore on that issue? Okay, I think we're going to come back and look at the supervision language. Yeah, it may just be in the final analysis; if we can't work the supervision out then maybe in the final analysis, our well-intentioned, my desire, to be inclusive just isn't going to work. So, we may just drop that other health care provider altogether and move forward. Okay, but if you could look into supervision and bring that back to us. Okay, anything else under new business? I don't see anything on the agenda. But I guess we can move... we have to wait until 7:30 for public presentations and public hearings so we might as well move to the Planning Director's report.

PLANNING DIRECTOR'S REPORT

Mr. Harvey: Well, Mr. Chairman, the start of my report, if you can indulge me for a few minutes, Andrea Hornung has prepared some additional information that the Commission had asked for with regard to family subdivisions and I am passing it out right now. We have the family subdivision ordinance scheduled for public hearing on May the 5<sup>th</sup> and this will be supplementary information that may help you in your deliberations on that ordinance. Andrea is here to give you a brief synopsis.

Mrs. Hornung: Good evening Mr. Chairman, members of the Planning Commission. I will explain the numbers because they need a little bit of explaining. What I did was the last time, on the other memo that you had, it only took the applications that we received for family subdivision applications under the five year and fifteen year limit only from 2005 to 2007. This time I went all the way back on every application we received. So, in totality, the total number of applications we've received on family subdivisions are 181. That includes those that might have been closed out due to inactivity or maybe something else, but anything that was submitted under the family subdivision application type were only 181; which would have been prior to October of '07 because the ordinance was approved in September, effective October '07 for the fifteen year limit. Those applications that were submitted after under the fifteen year limit were only ten. And that's pretty much from October 2007 to the present. Now, the total number of applications that were recorded as a family subdivision that were true family subdivisions, some of them they were submitted originally, they had to be restructured and the family subdivision application may have been withdrawn and then under a minor, different things like that, but the total of applications that were recorded as a family subdivision under the five year time limit was only 155. Total applications that were recorded under the fifteen year time limit to date, until today, would have been only twenty. Now, what I did was I went through all those applications from 1998 that were recorded because some of them are still open; they never proceeded with finalizing it. Those applications that were recorded, I went through every parcel with the

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Commissioner of Revenue's database, our Hansen database of applications that were submitted and looked at the names that were listed in our application database and the Commissioner of Revenue's database and compared the names that we had because we had the owner and even the applicant; because sometimes the applicant had a different surname than the owner and a lot of times their family name was still within their entire name throughout the application as well. With all those applications, I figured out there were twenty-three lots, twenty-two applications because one of them actually had more than one lot, but there were twenty-two applications of which twenty-three lots changed ownership before the five year time limit had lapsed so basically violating the five year time limit. But of those, there were three that I could tell by the names of the owners that it was transferred into that they were foreclosures because it was either a bank or a loan company that I happen to know about that loan company because I have some property that I'm looking into that was foreclosed on and I'm looking into. So I do know about that one. With the ownership changes, I didn't have the time and I'm not sure if we really have the resources, to go into and looking into those names to see if those names are actually family names or the person is a family member because of the different names and marriages and keeping your maiden name and that type of thing because we do have affidavits. Now, I haven't gone through the application files to research all those affidavits because we usually put the name in the database. And then the other table, it shows you like in 1999 there were a total of three lots that changed ownership prior to the five year. One lot was actually transferred in 2001 and two lots were transferred in 2003, of the lot that was recorded in 1999. And so in 2000 there was only one lot that changed ownership prior to that it wasn't clear if it was a family name. Obviously if it was the same name as the application, that was easy. Or if the transfer had a zero for monetary value, you could almost assume that was a family member because if you are going to transfer and sell it out of the family, you are going to receive a monetary benefit from that. In 2001 there were only two lots, 2002 there was one lot, 2003 you actually had five lots total, 2004 you only had five lots, 2005 so far there were three lots. But of course, anything recorded in 2005 still has the rest of 2010. And then I even went as far as 2006. But once the applications...

Mr. Fields: But let me be clear. These are lots subject to a five year restriction that were transferred before the end of five years?

Mrs. Hornung: Correct.

Mr. Fields: So each of those had a waiver from the Board of Supervisors?

Mrs. Hornung: I do not know; most likely not because the Board has not issued a lot of waivers.

Mr. Fields: So these were done then in defiance of the ordinance, right?

Mrs. Hornung: Not necessarily. That information I don't have at this time because if Mr. Smith did the family subdivision but yet his daughter's name was Jones and it wasn't in the application information that we had, then there are some issues that you can't assume that if the property transferred out of the family name of Smith into a different name, that that named person was not a family member.

Mr. Fields: I understand that, but it just tends to bring to mind though that there is absolutely no enforcement of this provision of the ordinance. If you have these transfers and you don't know whether they are transferring into the family or not, that means that there is no process for checking if

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every time a family transfer is done before it's time limit that it is in compliance with the ordinance. Is that done to the Commissioner of the Revenue? Is he in charge of enforcing that ordinance?

Mrs. Hornung: Well, what I have seen in the Commissioner of Revenue records, they do put in the information that this was the Smith Family Subdivision or the Smith-Jones Family Subdivision and then by transfer they could see if the name was the same. If there was a transfer out, we have been notified; there was I think one or two applications that we do know of that that has happened. I think that was the impetus for the fifteen year time limit. But if transfers happen, it's not always known because the Planning Department won't get that information; the Commissioner of Revenue would get that information for a transfer but whether they would check every transfer of a subdivision that it was within the ordinance, I don't have that information.

Mr. Fields: So, at this point, Mr. Harvey and Mrs. Roberts, do we know who is responsible for enforcing that ordinance? Or have we discovered that there is perhaps a gray area here that we need to address?

Mr. Harvey: I'm not aware of any entity currently enforcing the ordinance. It could pose a problem for somebody that is trying to get a loan if there is a cloud on the title because they are a non-family member. But, as far as enforcement, I am not aware of any County entity doing that right now.

Mr. Fields: Mrs. Roberts, do you know of any?

Mrs. Roberts: Nor am I. It certainly should probably be put into the Code that it's put in the deed so that when the title is searched it gets picked up. But, to my knowledge, that is not being done now.

Mr. Fields: Okay. What would be the logical mechanism for enforcement for something like this? Obviously planning, because I know that planning is not... I mean, zoning and planning and code enforces things like compliance with proffers and conditions of Conditional Use Permits, but generally you guys aren't involved in... I mean, that's way outside of what your daily orbit of information is, right? Title transfers of parcels of land, right? That's just not something that goes through planning or even code, does it?

Mr. Harvey: Correct, it does not. We don't interface in that area of the County government. The ultimate solution in this case would be to vacate the plat if you wanted to try to create a remedy. But that also could pose a problem where you have two different owners, because then you would have two different people owning the same piece of property may not necessarily have... the ownership interest gets really hairy in that case. I know, looking at the family subdivision regulations in other jurisdictions, Prince William County has a self-reporting process where if you're going to transfer within the five year time limit, you are supposed to report to the County that you're doing that.

Mr. Fields: So, it's an honor system; which is basically what we've got now, right?

Mr. Harvey: Correct.

Mr. Fields: In theory you are supposed to... because we've heard a couple of those when I was on the Board of Supervisors... in theory, if you need to... which is why I don't see why the fifteen year is any different than the five year. The process has always been a legitimate process, right? It has always been that if you feel like there is a circumstance that requires you to transfer that out of the family, you

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make an appeal to the Board which can grant a waiver based on hardship or necessity or essentially whatever reason the Board wants. One would hope the criteria was specific and clear and fair, but theoretically, if you meet those criteria, the Board can grant that waiver. But right now the only reason compelling you to go to the Board is your own sense of living under the law.

Mr. Harvey: Or potentially trying to get a loan.

Ms. Kirkman: Could you explain that please? How would getting a loan... because if there was nothing recorded on the deed, how would anybody know?

Mr. Harvey: My assumption is if someone is applying for title insurance that the title examiner is going to follow the chain of title and they are going to find the plat that says Family Subdivision. And if the plat itself says it's complying with Section 22-5 of our Subdivision Ordinance, I would assume the title examiner would go and look up that Code provision to see that what is done complies. But I don't know to what extent they actually do that. I know in other counties that I have read their rules and they specify that the County Attorney's office reviews the deed and approves it before it gets recorded; that it has that specific Family Subdivision language and it can't be transferred to a non-family member and those types of things. But I don't know exactly how they do it from an enforcement standpoint.

Mr. Fields: What other counties have you looked at? How do they do it in Albemarle and Fauquier?

Mr. Harvey: Recently I looked at all the surrounding counties because a Board member had inquired about minor subdivisions as well as family subdivisions.

Mr. Fields: Do you know what Albemarle and Fauquier do? Do you recall? Or did you look at those?

Mr. Harvey: We had Fauquier County and I don't remember specifically, but I could get that information to the Commission.

Ms. Kirkman: Mr. Chair? Well, this is very interesting but actually I was interested in ownership changes after the five years had expired. Could we get that information?

Mrs. Hornung: I could go back and look at that; because a lot of them I didn't look at after the five year because I thought what was important was the changes during the time limit of going from five to fifteen.

Ms. Kirkman: Well, no, actually the concern was that people were using this to circumvent the subdivisions requirements and then holding it a minimum of five years and then transferring it as soon as the five years expired. So that question still is open although we have certainly covered a fairly significant enforcement period. How many waivers have been granted?

Mrs. Hornung: I didn't look into that. I think that in the four years I've been here, there might have been three or four that I know of that went to the Board.

Ms. Kirkman: So that would be a majority of these transfers have occurred without waivers?

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Mrs. Hornung: I don't know that information. I don't have that information. What would have to be done is...

Mr. Fields: Of course, they could be done within name... she hasn't researched. It could be that some of these could have been done outside the legality of the ordinance; some of them could have been done within families that it doesn't appear obvious because of names.

Ms. Kirkman: But in the application for the family subdivision, they have to identify the family member that it's for by name, correct?

Mrs. Hornung: Correct.

Mr. Fields: Right. Could they have transferred it to another family member though without a waiver or notification to the County?

Mrs. Hornung: They probably could because the way we explain the ordinance to the public is that as long as you keep the property in the family name for that many years, you're within the limits of the ordinance. So even if my name is Smith, as married, but my brother is Jones, and that's the Jones Family Subdivision, you'd have to go through some paperwork and the Court records to see well, who's that transfer? Are they related? Maybe I kept a married name I had a long time ago and I married the second or third time and there's no trail between my name and the family name; if I'm an in-law too.

Mr. Fields: Right.

Mrs. Hornung: And then there's the definition; mother, father, sister, brother and then if it's a step or grandparent.

Mr. Fields: And I didn't mean to cut you short; I appreciate all the work you've done on this, but these numbers here are essentially transfers that you've been able to determine occurred inside of the five year limit.

Mrs. Hornung: Correct.

Mr. Fields: Okay. How many lots that were held for five years or six years and then transferred out of the family is something we still don't know, right?

Mrs. Hornung: No.

Mr. Fields: Is that even feasible to look at or is that just... I mean, I'm hoping these are in a somewhat searchable database format or the idea of you sitting there going through like files of index cards trying to figure this out is a little...

Mrs. Hornung: Well, what I do is I open up the Hansen database and I do a sort of the applications that were submitted under a family application. And then I open up the Commissioner of Revenue database and when I go into application number 5 and I look at the parent parcel that was subdivided, I look within that database seeing that, okay, it was a family subdivision; it created one lot of six acres, it was recorded on this day, the owner on the application was this name. The applicant, if it was

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different, was this name, look up all the names, all the parcels that might have been connected because sometimes there is a boundary line adjustment and division within that family subdivision, look up all that in our Hansen database and then go into the Commissioner of Revenue's database, pick up that tax map number and see if 25-5 has another 5A, 5B, 5C. If it does, look in there and see whose name it is. Not only look at it in the tab that says "transfer", but look in the other tab that is called "base" where it has all the information of when the house was built. And also, if the house was already there and it was recorded for transfer later, I can assume it was already in the family or maybe it was a parent parcel. And then look at the more detailed name of the ownership and there is a statement in there that says "part of Wilson Estate" or "part of Boscobel Subdivision". But that might say "part of Smith Family Subdivision" or it will have the word "family" in there and that way I would know it was a true because there are some that have further divided. There was a lot of land and there may have been three or four applications for that particular parent parcel. So, there's a lot of going back and forth and making sure that I am putting in the "46" instead of the "56", you know, putting in the right number and numbers and going back and rechecking. So, it is tedious and time consuming, yes.

Mr. Fields: Okay. It would be helpful to at least get some sense of, at least an order of magnitude of that transfer because one of the distinctions in my mind... I mean, since we went from five to fifteen and now we're being asked to consider undoing that move and going back to five, it seems like the difference between the two in terms of its efficacy to hold land within a family seems to hinge on how many people turned it over after five years, held it for the requisite five for a family member and then turned it over, and how many people kept it for the rest of their lives or a significant period of time. I mean, I don't think I'm off-base, am I; that that's the salient question to ask in crafting a new family subdivision ordinance.

Mrs. Hornung: Well, you can look at the total; you might want to know what the discrepancy is between the number of 191 being submitted and only 175 being recorded. There are some that never followed through, there are obviously some that are still open that are recent, also there are some that were closed due to inactivity, some were not approved because they didn't meet the requirements.

Mr. Fields: Is there a start date on... this 191 is prior to 10/17, does that mean from like 1664 to...

Mrs. Hornung: No, 1998.

Mr. Fields: Thank you. I was wondering like does that mean for 300 years versus the last five years.

Mrs. Hornung: No, 1998 is when the database started receiving the information electronically.

Mr. Fields: Okay. So, we're measuring '98 to '07 versus '07 to the present.

Ms. Kirkman: Yeah, so there weren't any recorded in 1998?

Mrs. Hornung: There were but they did not have a transfer within the five years. Now, from the applications that were recorded from '98 to the present, this time, instead of the list I did before, I put a little bit more of a detailed list, the application number, and I wrote that down. So now I only have to go back through those twenty-three applications and try to figure out if those transferred lots were... no, no, never mind. That's before five years, sorry. I was trying to think those were the only ones I needed to look at. We're looking at beyond the five years so I will have to go back through all the applications that were recorded and check and see which ones had parcels recorded after the five years.

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Ms. Kirkman: Do you have a spreadsheet that you keep all this in?

Mrs. Hornung: No, I'm going through the Hansen database. I didn't print out a report or anything; I just brought up the applications. I did a list, I did a filter of family applications and then on the tab I sorted by dates for processed or recorded. But it's the raw data so it's not in a report form; I can do a print screen but it's not from our Crystal Reports.

Ms. Kirkman: But when you're like then going and looking up in the Commissioner of Revenue, are you creating a spreadsheet for yourself to keep track?

Mrs. Hornung: I'm writing it down.

Ms. Kirkman: You're writing it down, hand-writing it. Okay.

Mrs. Hornung: Yes.

Ms. Kirkman: And could I get a list of the family subdivisions? The print screen?

Mrs. Hornung: From 1998, the ones that were submitted or just recorded?

Ms. Kirkman: Recorded. And then on this table what I think would be helpful, because we can't quite get at the numbers the way you've aggregated them, is on the second table to add a column which has the number recorded for each year and then...

Mrs. Hornung: That is.

Ms. Kirkman: How many were recorded in 1991... I mean 1999? It doesn't show that information there. The number that were recorded in 1999.

Mrs. Hornung: Oh, you want the total number of lots recorded per year?

Ms. Kirkman: For each year. And the reason why is, you know, it's important if one of one lots was transferred before the five year or after the five year. Of the 175 that have been recorded, are half of those ones that can't even be transferred legally at this point? I mean, we need to understand what the proportions are here. So, if you could add that column at the beginning of the second table; and, at the end of the table, add the way you have the number of lots there, which is the number that were transferred prior to the expiration of the five year period. And then the second column that we're interested in is the number that were transferred after the five year period expired. And I appreciate you doing this work.

Mr. Fields: I am really sorry that this is so onerous.

Mrs. Hornung: That's okay; you don't want it 5/5, you want it the next meeting in May?

Mr. Fields: Yeah, sure. Take your time; we have a public hearing on 5/5 though, right?

Mrs. Hornung: Right, I think you have a few.

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Mr. Fields: Well, we can defer the public hearing if you want.

Mrs. Hornung: Well, the staff report is almost done for the public hearing, but I will work on this and, if not, maybe try to have it that evening; the numbers for you. So, you want the number of transfers that happened after five years, the recorded lots since '98, per year, right; how many lots were recorded each year...

Ms. Kirkman: It's adding two columns to this table.

Mrs. Hornung: Right. And then the total number of lots recorded each year since '98.

Ms. Kirkman: Yeah, because the number of applications is really kind of irrelevant. It's really what gets recorded.

Mrs. Hornung: Well, that's why I showed you how many were submitted and to see how many were recorded to give you an idea that, even though we've had a lot submitted, that's not necessarily all of them that were recorded.

Mr. Fields: But since there were more, twice as many recorded after 10/07 as were submitted, one would see that they are trickling through the process.

Mrs. Hornung: Right.

Mr. Fields: Obviously, at least ten of those are ones that were done prior to '07, right?

Mrs. Hornung: That's possible yes. The ones that were recorded after '07 aren't necessarily the ones that were... they were submitted.

Mr. Fields: Right, because there's only ten submitted and twenty recorded.

Mrs. Hornung: Right. But of the twenty recorded, they could have been older ones with the five year limit.

Mr. Fields: And forgive me Mr. Harvey if I've asked this question, at least regarding this question, (a) the enforcement question and (b) the question of time limits, did you guys do a breakdown of our "peer counties"? Do we know what the family subdivision ordinance is like in those counties?

Mr. Harvey: Mr. Chairman, so far I haven't researched the peer counties but I've researched all the surrounding counties.

Mr. Fields: The peer counties, right, are Spotsylvania obviously, Hanover, Fauquier, Albemarle and Prince William?

Mr. Harvey: I believe that's correct.

Mr. Fields: Prince William because of its proximity, Spotsylvania because it's the closest by far demographically, and then Hanover, Fauquier and Albemarle for relative proximity and population.



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Mrs. Hornung: Loudoun and Henrico.

Mr. Fields: Loudoun and Henrico?

Mr. Harvey: I think Loudoun is one but I'm not sure of Henrico.

Mrs. Hornung: I think we always had six.

Mr. Fields: I thought it was Hanover because Henrico would be really irrelevant.

Mrs. Hornung: Right. Fauquier, Spotsylvania, Hanover, Albemarle, Prince William and I think... I was writing down what the sixth one was, I think it's Loudoun. It's either Loudoun or Henrico.

Mr. Fields: Loudoun maybe, because of the growth factor.

Mr. Harvey: We can provide that information to the Commission.

Mr. Fields: Okay. Again, I don't want to make a lot of work, just kind of the high points. If you do how do they enforce it and do they use the maximum or what year number do they use. Just so we know what people around us do, that's usually good for some kind of reference. Okay, are there any other questions on this issue?

Mr. Harvey: Mr. Chairman, if I may continue with my report.

Mr. Fields: Sure. We're going to go I guess about four minutes.

Mrs. Hornung: Okay, thank you.

Mr. Fields: Thanks Andrea.

Mr. Harvey: Yesterday the Board of Supervisors passed a resolution authorizing the County Administrator to enter into an agreement with VDOT for a UDA grant; the Urban Development Area grant. VDOT has selected a consultant to work with the County. The grant is up to a value of \$225,000. The grant would be for consulting services; the consultant would actually work for VDOT and charge their time to VDOT but would be at the County's disposal to help designate the UDAs, create changes to our subdivision and zoning ordinances for new urbanism standards. Also develop small area plans and examine TDR. The firm that has been selected by VDOT to serve the County is Rhodeside and Harwell. And we are required to have the signed grant agreement back to VDOT by the 25<sup>th</sup>, so at that point in time VDOT will turn things over to us and Rhodeside and Harwell. And we'll be coming back to the Commission with more information and project schedules and those types of things. We will have to have all the requirements of the agreement completed by the end of September of 2011, next year. Also, the Board of Supervisors referred a zoning text amendment to the Planning Commission regarding minor proffer amendments, minor CUP amendments and minor changes to major site plans; that's in your hand-out. The Board is looking at a process where we would have a lower fee for those types of applications that will involve a zoning text amendment to further define what those minor amendments are and how they are classified. Also, they referred a zoning text amendment dealing with nonconforming structures. Basically, that ordinance would allow a nonconforming structure, specifically a dwelling, to be expanded as long as it didn't further encroach

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the setback. And that would no longer require a special exception; that could be done administratively. And the Board also approved Onville Retail rezoning. They deferred it for additional time for the applicant to consider additional right-of-way dedication along Onville Road. Since the time of the Planning Commission hearing, we had received a concept from VDOT about how the Onville Road widening project may look and it showed a dedication of right-of-way of seventy-five feet from centerline. The applicant had previously proffered fifty-five feet. The applicant did make changes to their proffers to proffer the full seventy-five and, again, the Board approved the rezoning application yesterday. And then, Mr. Chairman, I don't know if you were going to cover this in your Chairman's Report about the next meeting being May 5<sup>th</sup> and Mr. Howard's suggestion about dinner.

Mr. Fields: Yes, Mr. Howard had suggested that we have a Cinco de Mayo dinner again I guess at 5:30. So, I guess he'll coordinate that. But I'm just putting that out there.

Ms. Kirkman: Mr. Chairman, actually it's 7:30, but I would like to go back to the Planning Director's... or maybe I can ask it now. So the thing about reducing fees, it looks like they're cutting developer fees to about half for these various things. Can we get, as we consider this, can we get some listing over the last couple of years what applications have come in under these revisions? This is just for revisions, is that right?

Mr. Harvey: Correct. And right now we don't have a revision application fee that's a minor revision; we only have either major revisions or a proffer amendment or a CUP amendment. And those CUP amendment fees and proffer amendment fees are essentially the same as a new application. But this minor amendment would limit it to either two conditions or two proffers that are not significant in nature that's going to affect the layout and/or intensity of the use of the property.

Ms. Kirkman: And if somebody submits something like that now, what fee do they pay?

Mr. Harvey: They pay the full application fee, just like a new application.

Ms. Kirkman: When this comes to us with a staff report, if we could get a list of what those have been over the last couple of years and what the fees have been, because part of the fee is based on the size of the property.

Mr. Harvey: Correct. So, would the Commission like that to come back to your next work session with some information or would you rather go ahead and schedule a hearing?

Mr. Fields: I think we need to have a work session and really sift through all the fees and get a sense from staff... to have a good recommendation we need to kind of go, it's a little bit tedious but in my mind we need to go category by category and get your input on it, because you are the guys that do the work. So we need to understand what's involved here to adjust the fee. That's from my perspective; anything from any other members on that? Is that okay that we bring that to a work session before we go straight to public hearing on that? Not hearing any objections so... okay.

Mr. Harvey: That concludes my report Mr. Chairman.

Mr. Fields: Thank you. Okay, we're at the magic hour of 7:30.

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**7:30 P.M.**

**PUBLIC PRESENTATIONS**

Mr. Fields: Welcome to everybody. There are a lot more people here now than when we started. You missed some good stuff in that first hour; too bad you waited until now to come here. At this point, at 7:30 p.m., we begin the evening portion of the public presentations and public hearings. The first item is public presentations, remembering here that if you are here to speak on an item that is scheduled for a public hearing, which we have four, Comprehensive Plan Land Use Amendment, Reclassification, Conditional Use Permit all relating to Vulcan Construction Materials, and number 12, an Amendment to the Zoning Ordinance regarding non-conforming buildings. You will have an opportunity to speak at each of those, during each of those public hearings when those public hearings are opened. If you have something that you wish to bring to the attention of the Planning Commission that is not on one of those four items, now is the time to do so. You may come forward to the microphone. You must state your name and address for the record. There is a three light system there; when the green light goes on you have three minutes, when the yellow goes on you have one minute left, and when the red light is on it is time to please your remarks to a close. So, other than those items for public hearing, is there anybody that wishes to address the Planning Commission at this time? Alright, hearing none then we will close the presentations by the public and move to our public hearings. And Mr. Zuraf asked me, of course the 9, 10 and 11 are essentially related, a similar item, and he asked me do we want to combine all of the presentations. I said well in general but I did want to make sure that we had the discussion of the Comprehensive Plan Amendment first with sort of a pause in between because essentially we do need to consider, even before we open the public hearing, we do need to consider the appropriateness of the Comp Plan Amendment before we can obviously consider the appropriateness of the Reclassification and the Conditional Use Permit. So, with that in mind, I appreciate your understanding in asking how to proceed in that. So, Mr. Zuraf?

**PUBLIC HEARINGS**

9. COM2900288; Comprehensive Plan Land Use Amendment - Vulcan Construction Materials, LP - A proposal to amend the Land Use Plan component of the Comprehensive Plan in accordance with Section 15.2-2229 of the Code of Virginia (1950), as amended.

Mr. Zuraf: Can I have the computer please? Good evening Mr. Vice-Chairman and members of the Planning Commission. Mike Zuraf, principal planner with the Planning and Zoning Department. I am here to talk to you about items 9, 10 and 11 which are the Comprehensive Plan Amendment, Reclassification and Conditional Use Permit applications all relating to the Vulcan Construction Materials application. I'm going to go through item by item and will be going over first the Comp Plan Amendment, item 9. The applicant is Vulcan Construction Materials, LP. This parcel is Assessor's Parcel 19-64, a portion of that property; it's highlighted in gray on the screen. And it is basically to the north of Garrisonville Road and towards the end of what's known as Vulcan Quarry Road and also to the east of Toluca Road, but offset from Toluca Road. The other portions of 19-64 actually front on Toluca Road, but those portions of that property are excluded from this case. This shaded area, the subject area, is 99.64 acres. And just to let you know that the applicant did conduct a community meeting that was held on March 30<sup>th</sup> at Mount Ararat Baptist Church. The specific request, there are amendments requested to the Land Use Plan text regarding mining operations and also amendments to the Land Use Plan Map. And the Land Use Plan Map amendments would be changing the designation of the subject property from Rural Residential and Resource Protection to Heavy Industrial and Resource Protection. Looking at some of the specific text amendments being proposed, there would be changes to the objectives within the plan, specifically within Chapter 4. Chapter 4 includes the goals and objectives. Goal 1 deals with land use and Part D deals with

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industrial land uses in particular, and within that there are several objectives. The first change would be an addition to Objective 9 that would recommend areas designated for mining operations and for those to be in areas known to contain mineral reserves. A new objective, Objective 10, would encourage expansion of existing operations over the relocation or new extraction operations. And then another new objective, number 11, would encourage the reuse of mining sites for public infrastructure needs such as parkland and/or reservoirs. I will note that staff did present these policies to the Comp Plan Committee who is in the process of working on the new Comp Plan and they generally were amenable to adding these additional objectives into the section of the policies that dealt with the mining operations.

Mr. Fields: But those items you presented are all still just draft.

Mr. Zuraf: It's all still draft, yes.

Mr. Fields: Right. There is nothing that is yet...

Mr. Zuraf: That's part of these three...

Mr. Fields: How does this proposal relate to the existing adopted language of the Comp Plan?

Mr. Zuraf: The existing approved Comp Plan?

Mr. Fields: Yes.

Mr. Zuraf: These would be additional objectives in the current Comp Plan.

Mr. Fields: So this language exists in the current Comp Plan?

Mr. Zuraf: No, this is proposed to be added into it.

Mr. Fields: So, the question I'm asking is how does the proposed quarry, expansion of the mining operation, relate to the language that is actually in the current adopted Comp Plan? In other words, this tends to say that expansion of an existing mining operation is consonant with these new goals and objectives, right?

Mr. Zuraf: Right.

Mr. Fields: Right. So, is the expansion of the existing mining operation consonant with the existing goals and objectives of the currently adopted Comp Plan?

Mr. Zuraf: Partially, and this kind of adds more support to that, to what's being proposed.

Mr. Fields: I understand Mike, and I understand what you are saying, but I am trying to get this has not been adopted, it has not even had a public hearing yet, right, this language?

Mr. Zuraf: Right. Here it is right now.

Mr. Fields: Well, okay. But we're not having one carrying on this language are we?

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Mr. Zuraf: Yes, we are.

Mr. Fields: On changing the Comprehensive Plan to include this language?

Mr. Zuraf: Yes, yes.

Mr. Fields: Okay.

Ms. Kirkman: So, if it's partially consonant with the existing Comp Plan, why are these text amendments needed?

Mr. Zuraf: It just adds further support to the proposal that's being brought before us.

Ms. Kirkman: Does that mean there is insufficient support in the current Comprehensive Plan?

Mr. Zuraf: Not necessarily.

Ms. Kirkman: Then why are these text amendments needed?

Mr. Zuraf: It's just further supporting the proposal.

Ms. Kirkman: Thank you.

Mr. Zuraf: Looking at the proposed map amendments, we have two maps here; the existing Land Use Map identifies the existing land use designations on this site. Currently the lighter shaded areas are Rural Residential Land Use and that use extends further to the west on lands along Toluca Road. And then you do have Resource Protection which goes along with a Resource Protection Area Tributary Stream that runs through the site in this location. And the proposed change would designate the majority of the site to Heavy Industrial in the brighter blue where it would retain only the Resource Protection along Aquia Creek on the north end of the site. Now looking at some of the background of this proposal, we have the concurrent requests along with this that would allow for the expansion of the existing quarry and then relocation of the existing asphalt plant from the current location. The operators of these two facilities are Vulcan; Vulcan Quarry and Vulcan Materials operates the quarry pit and Virginia Paving operates the asphalt manufacturing plant. Looking at the historical history of this area and these operations, there were several prior approvals and expansions on this property with the quarry. In 1976 the original mining quarry was approved and, subsequent to that, the original mining site includes the land that basically includes all of this area that I am identifying. And subsequent to the original approval, there were several Conditional Use Permit revisions in 1983, 1988 and 2001. You have been given all the prior Conditional Use Permit and Rezoning approvals for these cases. In 1988 there was an approval for the expansion of the original pit onto what's known as the Pollard Tract. This is parcel 20-2; that's this location and that received Rezoning and Conditional Use Permit approval. In 1991 there was approval for expansion to the Hampton Tract and that's this location; that's where mining is currently going on. And then the area of the expansion would be this red highlighted area. And then for the asphalt plant that's located in this location, that was approved in 1988 with a Conditional Use Permit revision that happened just last year to allow more nighttime hours of operation. In evaluating this proposal, we looked at several factors. We looked at land use, noise and visual impacts, military operations on the adjacent properties to the north, mineral resource issues, natural resources, cultural resources, transportation, utilities, schools and parks and recreation and I

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will go through each of those. Looking at the current use of land, this is an excerpt of one of the maps in the draft Comp Plan that identifies the current use of land. And unfortunately we have a big route number in the way but the subject property is the green shaded area here; that's identified as Agricultural and Forestry currently. You see the mining operation to the east is highlighted as mining and then you have Toluca Road in this location and what's kind of hidden is the lighter shading of Rural Residential uses that are located to the west of the site. And you do actually have now Residential uses on properties up in this area in the Masters Mill Subdivision. Looking at the Land Use Plan, the current Land Use Plan designation, as I noted, is Rural Residential. What the Land Use Plan recommends under this designation would generally be residential dwellings, typically three acres in size. Development under this designation would allow approximately twenty-two lots and this is based on a staff estimate of 4.35 acres per lot. That's kind of a standard number that we've identified from past Agricultural subdivisions. And then you do have the Resource Protection Land Use which corresponds with the CRPA buffers along this tributary stream. And there is floodplain and wetlands along this area too. Looking at the noise and visual impacts, there is potential for noise impacts with this change. Looking at the current situation you have the stream that is identified as Resource Protection Area that serves currently as a buffer from the existing mining operations. From the homes to the west, the proposal would move the operation closer to the existing residential uses on Toluca so there would be a likelihood for increased noise for residents along Toluca Road. For reference, this is one of the exhibits provided by the applicant that identifies a cross-section view from the homes along Toluca Road and then showing what impact there might be from the operation as proposed. This is a cross-section view further towards the northwestern portion of the site where the asphalt plant would be proposed. So, in this area the applicant is proposing a twenty foot tall berm and other features including an access road. In this area you have more forested areas so this does kind of identify from this one house, you have a lot of forested areas. Much of that, staff will note, is on the offsite, on the residential property, then you do have some forested areas that would be retained prior to getting to the berms. Also, staff will note that the Land Use Plan does note that for heavy industrial uses that it notes them as being a nuisance to less intense uses and these uses should be buffered from residential developments. Looking at the issue of military operations, this is a map out of the Range Compatibility U-Zone study out of Quantico. The site is in this location where the star is and staff will note that the site is within a five mile radius of several ammunition ranges that occur on Quantico. Those are highlighted in purple; this is the closest ammunition range. So given what happens up there, there is definitely noise and vibration that is generated from live fire operations in this area on a regular basis. Also, with their operations, there is a common aircraft overflight that occurs in this area. With this and due to these issues, industrial issues would be more conforming with activities that occur in Quantico than additional residential development. And also, Quantico has encouraged the County to limit the amount of residential uses that are in close proximity to these live fire ranges in Quantico. Looking at the mineral resources, the request does include the addition to Objective 9 to support the location of heavy industrial uses where suitable resources exist. Staff will note that the State Code, as it relates to comprehensive planning, does recommend that the County plan for mineral resources and that the County has deferred it to the Division of Mines, Minerals and Energy mapping when they have not conducted their own study. So, this is a geology map from DMME, the State Agency that identifies the location of different mineral resources in the County. And the site is circled in this location and the mineral resource that is present is known as Garrisonville Mafic Complex. It's an Amphibolite which is a type of granite and staff confirmed this with the applicant. And that's the mineral resources that they're going after. Looking at the natural resources on this site, we do have the site bordered by Aquia Creek to the north, which includes Resource Protection Area, 100 year floodplain and wetlands, we do have the tributary to Aquia Creek which runs down the eastern side of the site. That also is identified by County maps as Resource Protection Area and does include

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floodplain and wetlands. The applicant has submitted a Perennial Flow Study which suggests that the perennial's influence ends approximately in this location and the RPA ends in that location. Staff has not been able to confirm these findings due to the amount of precipitation that has been occurring all winter and all spring. There have not been normal weather conditions to be able to confirm these studies. As of now, the RPA still covers the full extent of the site and subject to the findings of the study, it may end up coming back to this location. Also, staff would note that an endangered plant species known as *Harperella* was identified downstream of this site along Aquia Creek. The DCR Natural Heritage Program has informed staff that this is the only known population of this plant in the state and they have I guess a typical recommendation to recommend a 200 foot buffer along streams in this case with a known resource. This is the Environmental Exhibit that the applicant has included with the application. This does highlight some of the steeper slopes on the site. The orange shaded areas are locations of ten to twenty-five percent slopes and the more brown shaded areas along this tributary stream as you get closer to Aquia Creek are areas where there are slopes in excess of twenty-five percent. Staff will note that the proposal is not really in compliance with the natural resource goals in the Land Use Plan. The Land Use Plan does recommend that more intense uses should locate in a manner to preserve sensitive resources. And staff will also note that preserving the resources in this area and mining would not really both be able to occur due to the shape and size of this lot. So that's why the applicant is proposing for this resource protection land use to be removed from the Land Use Plan. Staff would note though that if this site would develop as another type of industrial use, other than mining, that would likely be able to occur without impacts to the Resource Protection Area. Looking at the cultural resources on the site, there are several resources that may be impacted. This image identifies some of those. There is an existing structure on the property, the George French Homes structure is in this location in the lower southwest corner of the site. There are some barn ruins that basically the barn is pretty much non-existent at this point. There is also a family cemetery, the Homes Cemetery, in this location. Actually the subject property does exclude the Homes Cemetery and the portion of land around that cemetery. There is the possibility of other resources on the site. There's a potential for a slave cemetery on the site and also the possibility of some Native American sites on this property. The applicant has not yet submitted a Phase 1 archaeological survey; they are in the rezoning portion trying to address that issue with proffers. Here is a photo of the George French Homes residence; it's an older structure that is currently vacant. And also, this is looking out north towards Aquia Creek from the back of this structure. This area here is the fence around the Homes Cemetery. This is the western limit generally of the quarry proposal. Looking at transportation issues, the image on the left identifies the total subject property and you can see how portions of that property view extend out to Toluca Road, but the image on the right does identify the portions that are subject to this request; that the applicant has limited their extent to the portions in from Toluca Road. So, the idea is that this proposal would not have a transportation impact out to Toluca Road. This image here identifies the existing access to the site. It's basically through a signalized intersection off Garrisonville Road at this point, and then you have access to the north through Vulcan Quarry Road in this area. The road splits off part way up it; this portion to the right will head over to the Vulcan Quarry and then if you head over to the left, that runs up to the Virginia Paving asphalt manufacturing operation. The applicant has noted that this proposal would more so expand the life of the operation and they don't see that this proposal would increase the traffic generated from this site; they would just basically open up a new area for them to access at a later date. And given this, and from a long range perspective, staff did not feel the need for any follow-up traffic analysis. Looking at the Transportation Plan itself, Garrisonville Road in this area is a four lane divided road and is not recommended to be widened any further at this point. Further to the east, to the east of Shelton Shop, Garrisonville Road is planned to be widened to six lanes but there is no future widening planned in this location. Here's just a photograph of the access off of Garrisonville Road. Here's Garrisonville Road

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and here's Vulcan Quarry Road. Some of the other utility and facility issues; under this proposal this site will continue to use public water. No increased demand is anticipated and there is no public sewer utilized. They utilize a drainfield system. And staff will note that the adjacent residential uses along Toluca Road, they utilize private wells and drainfields. The applicant has noted that they believe this project will not impact those properties, as far as their well water goes, due to the quality of the rock that that is being mined out of this area. And they can expand on that some more. They did state they were working on a hydrology study and that has not been provided to staff yet. Also, with schools there would be a potential decrease of school demands with the change from Rural Residential to Heavy Industrial, a potential decrease of approximately twenty-two students given the typical estimate of one student per single-family detached house. And then a decrease in demand of parks of potentially 1.3 acres given the potential of sixty-six residents if this site was to develop residentially. The request then does include a new policy to encourage the reuse of the mining facilities for parks or water reservoirs. Looking at a summary of this request, there are several positive aspects with this. This proposal would conform with the operations that occur in Quantico. It would discourage additional residential dwellings in close proximity to military ammunition ranges. There is a known presence of mineral resources in this area. And then also the expansion versus new facilities would be seen as more beneficial. And then also there would be no transportation impacts and it would reduce the demand on schools and other services and allow for the long term access to mineral resources that would help in construction in the County and growth in the County. There are also some negative aspects with this request. There are definite environmental resource impacts with the removal of a perennial stream and tributary to Aquia Creek, and the associated floodplain and RPA in that location. Also staff would note that without adequate buffers there may be impacts to the adjacent residential uses to the west and then also potential impacts to cultural resources that are not fully understood yet. Given this, though, staff would recommend approval of the Comp Plan Amendment. Staff cites that the ability to access the limited resources to help support growth in the County would outweigh the impacts to natural and cultural resources. And at this point I guess we want to stop and discuss this.

Mr. Fields: Any questions for Mr. Zuraf?

Mr. Hirons: Mr. Chairman, the one question that kind of popped into my head with the slide that did kind of show the proximity of the military ranges, do we happen to know what types of weapons are fired on the ranges that are closest to that facility and the property?

Mr. Zuraf: That should be in the RCUZ study, the Range Compatibility Use Zone; I don't know off the top of my head. We can get that information.

Mr. Hirons: Okay. I think that would be helpful for me, thanks.

Mr. Fields: Any other questions for Mr. Zuraf:

Ms. Kirkman: Mr. Chair... you concluded by saying staff recommends it because it would support growth in the County. Could you please explain what you mean by that?

Mr. Zuraf: It would support the access to resources that would help with the needs of County, supporting the needs of the County, not necessarily for growth but for construction itself. And, I guess to expand that, would avoid having costly shipping in the long term of materials from other areas that are outside of the County. It is more so you've got the resources here, so use them; they are being utilized in the County where they exist.



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Ms. Kirkman: There is a quarry down in the southern part of the County off of... is it coming to the end of its life's usefulness?

Mr. Zuraf: Are you talking off of Kings Highway?

Ms. Kirkman: Kings Highway.

Mr. Zuraf: Well, the quarries in that part of the County are sand and gravel which is a different type of resource.

Ms. Kirkman: And this is gravel?

Mr. Zuraf: This would be granite or gravel, yes.

Ms. Kirkman: So it's gravel. And there's another source of gravel in the County?

Mr. Zuraf: That's different. I believe it's more so sand-based and I think maybe the applicant can expand on the differences between the two.

Ms. Kirkman: And so the public benefit is what again? It's cheaper materials will be available for building?

Mr. Zuraf: It's avoiding the shipping costs of shipping in materials from outside localities.

Ms. Kirkman: And how does the public benefit from that?

Mr. Zuraf: I guess lower costs of goods.

Ms. Kirkman: And you said that the expansion was better than a new facility. But where would a new facility be constructed? So, what is it that's not going to happen since this is going to be expanded?

Mr. Zuraf: I guess it's the idea of needing to create a... there's not a known new facility out there but it would avoid having to start up a whole new facility that would have a whole new set of impacts.

Ms. Kirkman: So, there's no other potential facility out there.

Mr. Zuraf: There are other approved facilities in the County.

Ms. Kirkman: But there's no plans for another new facility, no area that is currently zoned for this.

Mr. Zuraf: There's the quarry that's down off of 17.

Ms. Kirkman: But that's already operational.

Mr. Zuraf: No.

Ms. Kirkman: But haven't they... I mean, they're going through a whole thing to make it operational.

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Mr. Zuraf: Right, but it's not open and running yet.

Ms. Kirkman: So you say if this gets approved, the Westlake Quarry won't go online?

Mr. Zuraf: No, I'm not saying that at all. It would avoid the need for additional new quarries.

Ms. Kirkman: You mean, other than the Westlake one that hasn't started yet?

Mr. Zuraf: Right.

Ms. Kirkman: And you're basing this on what needs impact or needs analysis? Is there a study that says there's a need for these things?

Mr. Zuraf: No, this is just based on the general idea that expansion of an existing facility would be preferable over the starting up of a new facility entirely from scratch.

Ms. Kirkman: Okay. And then for the first time, I've seen staff bring in Quantico operations and setting the five mile range. So, is staff now using that as an evaluation criteria for projects that are within that range?

Mr. Zuraf: We used it for this as it's a known issue.

Ms. Kirkman: So staff will now be using that for all projects within the five mile range of detonation centers at Quantico?

Mr. Zuraf: We would use that as a consideration, yes.

Ms. Kirkman: And you mentioned air flights; so it's now staff's position that residential buildings are inconsistent within that five mile range because you cited that as a benefit.

Mr. Rhodes: Did anybody hear that?

Mr. Zuraf: Not necessarily; I am stating that Quantico had recommended that residential would be less... that Quantico was encouraging less residential in closer proximity to those ammunition ranges.

Ms. Kirkman: So, I think your words were something like "I think it conforms with Quantico operations" and so now you are going to be using... I just hadn't seen staff present that before in other applications before us in that area. Is staff now going to be using that as a criteria in looking at projects, whether or not they conform with Quantico operations?

Mr. Zuraf: Yes.

Ms. Kirkman: Okay. So, this is going to expand the life of the operations. Now, we just got back and I certainly haven't had time to read through all of these rezoning and Conditional Use Permits that have been granted over the years, but I did notice a number of them cite that the pit would be turned over to the County or offered to the County as a reservoir. As we know, those are quite expensive and we're into the tens of millions of dollars on Rocky Run already. So this of course... adding the potential of a reservoir for the County drinking water supplies is a very valuable asset. Does

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expanding the life of the operations delay when the County has the opportunity to use that quarry as a reservoir?

Mr. Zuraf: Well, that probably is more so addressed in the rezoning where there are set timelines that are established in the proffers relating to when the quarry would be turned over.

Ms. Kirkman: I'm actually looking at the language in the originals... for the original pit. That original pit looked like it was full of water but I don't believe it's been turned over to the County yet or even offered to the County as a reservoir.

Mr. Zuraf: Yes, that original pit is not tied to being dedicated to the County.

Ms. Kirkman: So, what is the pit that is tied to being dedicated...

Mr. Zuraf: That's the Hampton pit.

Ms. Kirkman: The Hampton pit.

Mr. Zuraf: Yes, which is further to the east.

Ms. Kirkman: Okay, so, what I'm asking is you said this would extend the operations of the quarry. Does that mean it will extend the time for when the Hampton pit could potentially be transferred to the County for a reservoir?

Mr. Zuraf: No, and actually the proffers would establish a date as to when that Hampton pit would have to be turned over to the County, which I don't believe exists now which is twenty-five years from rezoning approval.

Ms. Kirkman: So, it would add an additional twenty-five years?

Mr. Zuraf: No, it would actually set an end date. And my understanding is the applicant, and the applicant can confirm this, they are operating in the Hampton pit and their intention is to continue operating in the Hampton pit until they are complete and then move over to this site. So, this action, to answer your question, would not affect when that Hampton pit would get turned over to the County.

Ms. Kirkman: And are mining operations consistent with maintaining good water quality, since it sounds like there could potentially be a time when one portion of the mining operation is dedicated as a reservoir and another portion of the quarry is active mining?

Mr. Zuraf: I don't have an answer for that.

Ms. Kirkman: Okay. And I think I have just one more question. Let me get back to this. It says the site will continue to use public water but, again, just skimming through the older documents, it looks like at one point they had proffered or agreed to a condition to not use public water?

Mr. Zuraf: I would have to research that. Which...

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Mr. Harvey: Mr. Chairman, Ms. Kirkman, with regard to the packets you have at your desk, we have put together the approvals for the asphalt plant, the main pit, the Pollard Tract and also the Hampton Tract. We have the current approvals on the top and, the further back you go are the older approvals, because several of them have had amendments over time.

Ms. Kirkman: Right, that's why I'm trying to understand what's in affect at this point. And one of these at some point referenced dedication of twenty-three acres for a park? Do you or Mr. Harvey know what happened to that one?

Mr. Zuraf: That, I believe, is on the Hampton Tract.

Ms. Kirkman: Again, I just got these moments before the meeting started.

Mr. Zuraf: I believe there are access issues with that site. It's on the far eastern end of the Hampton site.

Ms. Kirkman: So, that dedication never took place?

Mr. Zuraf: I'm not certain if the dedication... I know it's designated but I'm not sure if the dedication occurred. I don't know if Jeff can answer that.

Mr. Harvey: That's correct. The dedication has not taken place. My recollection is, is that they would offer it up to the County for a public park. The County has looked at it in the past for a public park but it ended up being a passive park and, as Mr. Zuraf has said, there are some questions about access to that park. So, at this point in time, the County really hasn't been interested in it for a park site.

Ms. Kirkman: Well, it just seems like parkland... I mean, there is so much discussion in the news these days about finding park space given our growing population and lack of fields and that sort of thing. Twenty-three acres is a lot of acreage. If we could get some kind of follow-up as to what's happened with that. Thank you.

Mr. Fields: There is a reference I just kind of lucked out on. The Ordinance O91-09, number 8, says "the applicant agrees that no demand will be made on the County to extend water and sewer to the subject property, except that in the event that such services are extended to neighboring sites, the applicant may connect to such system, provided that such extension shall be at no cost to the County". So, I don't know whether that still in effect or not but that's the old language.

Ms. Kirkman: Yeah, if we could just find out what the history is.

Mr. Zuraf: That is to the Hampton Tract which there is no use for water up there.

Mr. Fields: Okay. Alright, are there any other questions for staff? Alright, I'm thinking that what we should probably do is have the applicant address the Comprehensive Plan issue, and I will sort of poll the Planning Commission. Do you want to have the public hearing on this issue independently of the rezoning and Conditional Use Permit for the sake of clarity or definition on a number of issues? Or do you want to have the actual public hearing, the comments by the public and the rest of the public hearing all as one issue? Any opinions? Mr. Rhodes?

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Mr. Rhodes: No strong feeling either way.

Ms. Kirkman: My experience has been people tend not to understand the difference between the text amendment and the impacts of the rezoning or the Conditional Use Permit itself. So, what I would suggest is if someone wants to speak to both issues they be given more time, like two three-minute periods if they wish to speak to both. But we might get through it quicker if we do it as one. But the other thing I was going to suggest is that it's really unfortunate that Commissioner Howard, who is the representative for the Rock Hill District, could not be here tonight to hear what his constituents have to say on this issue. So I was going to suggest that we open the public hearing so that people who are here could speak tonight, but that the public hearing be continued itself to the next Planning Commission meeting so that the Commissioner from the Rock Hill District, Mr. Howard, would have the opportunity to hear directly from his constituents on this. I mean, it's a fairly major project and I think it's unfortunate that he's absent.

Mr. Fields: Interesting concept. Mr. Hirons?

Mr. Hirons: I think I agree with Ms. Kirkman. Initially, I think combining them really gets to the point of why folks may be here in this whole process. I mean, it's really one process. I don't know necessarily if folks really want to talk specifically to specific Comp Plan text or zoning text, etcetera, so I think combining them would be probably the best and most efficient use of time.

Mr. Fields: Okay. Do you want the applicant to address the text amendment separately or do you want to have Mr. Zuraf proceed with the rest of the presentation and then have the applicant address all three things together? Any preference on that? Okay, so everybody's clear though but let me just ask the Commissioners. Because nobody is asking more questions, I'm getting the sense that everybody is clear on what's being proposed in the Comprehensive Plan Text Amendment, independently of the rezoning, right? Okay. That's what I wanted to make sure of, because there really are a multiplicity of issues here and I'm always very... sometimes it's just the way things work. But I never like having Comp Plan Amendments abutted right up against a consideration of rezoning for that property because it seems like you're making a... sometimes it's necessity, I'm not making a statement one way or the other. Sometimes it makes pro forma which should be a carefully considered amendment to the Comp Plan. But, we'll go ahead and proceed. So, Mr. Zuraf, why don't you go ahead and proceed then with the rest of the presentation and then we'll have the applicant address all three issues, and then we'll open up to the public on all three issues combined. Madam County Attorney, that process is fine, right?

Mrs. Roberts: That's fine

Mr. Fields: We're okay with that? Alright, thank you.

10. RC2900289; Reclassification - Vulcan Construction Materials, LP - A proposed reclassification from A-1, Agricultural to M-2, Heavy Industrial Zoning District to allow heavy industrial and heavy manufacturing uses not otherwise listed, with the issuance of a separate Conditional Use Permit, specifically stone extraction and asphalt manufacturing, on Assessor's Parcel 19-64 (portion) consisting of 99.64 acres, located on the west side of Vulcan Quarry Road, approximately 1,900 feet north of Garrisonville Road within the Rock Hill Election District.  
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Mr. Zuraf: Okay, now looking at agenda item 10, the Reclassification portion of this request. This is a request to reclassify the property from A-1, Agricultural, to M-2, Heavy Industrial. The proposal basically would allow for the future expansion of the stone extraction and the relocation of the existing asphalt manufacturing. Looking at the existing zoning, the areas highlighted in red, this indicates the A-1 zoning in the light shade and all the land to the west is A-1 as well. To the east you have the existing quarry and asphalt operations zoned M-2. To the south you have A-1 property and to the north is Quantico unzoned Federal land. Looking at the Generalized Development Plan submitted with this rezoning request, some things to point out with this Generalized Development Plan is you do have a situation where this tributary stream would be impacted by this proposal. This actually highlights the proposed limits of the RPA as proposed by the applicant under their stream study which has yet to be determined. Part of this request would include diversion of this stream which would run around the western perimeter of the site and would drain into a separate tributary to Aquia Creek in this location. Also, part of the features around this western side of the site include a twenty-five foot undisturbed buffer, a total seventy-five foot buffer and a berm of ten to twenty feet in height; and then also an access road that would head over to the relocated asphalt plant, which would be in this location. The extents of the quarry would generally follow the inside of the access road. Within the Generalized Development Plan they did include an illustration, a cross-section of this buffer. Here, for example, would be the outer property line. You would have the twenty-five foot undisturbed buffer. Beyond that you would then have your ten to twenty foot tall berm and there would be a fifty foot transitional buffer as required by Code which would go basically to the top of the berm. Your seventy-five foot total buffer area is identified as being extending to the other end of the berm. Beyond the berm would be your stream diversion, then a safety berm, and then your access road, then your interior to the access road, and then your quarry pit. This is just an image of the existing asphalt plant as it exists today on the property where it is currently located. The applicant has included a phasing exhibit which you received in your package which identifies how this site would proceed to development. They generally identify that the first thing that would have to happen is the berms and stream diversion would have to be installed along this western limit of the site. Once that occurs then the asphalt plant, which is currently located in this location, would then be relocated to this other site; to the more northwestern portion of the site. Then, after the asphalt plant is relocated the quarry mineral extraction would proceed and it would proceed from the current pit from the east over to the west back to the subject property. The next image kind of identifies overlays where the ultimate limits of the quarry pit are envisioned with this request, and it would extend the quarry pit in this blue hatched-in area; and then the orange area would be the proposed location of the asphalt plant. Looking at some of the additional environmental issues, I have noted the impacts proposed to the tributary stream. With the impacts that would be proposed, there would be additional approvals required for these encroachments. Encroachments into the Critical Resource Protection Area and the floodplain would both require separate Board of Zoning Appeals actions to be able to impact the RPA and also fill the floodplain. Basically the diversion of the stream would be a filling of the floodplain. There also would be State and Federal permitting requirements. Initially the applicant had proffered the limits of the RPA encroachment and floodplain impacts, but staff has actually requested that that proffer be removed because since the RPA encroachment and floodplain encroachment is really going to require approvals from other Boards and agencies as well that keeping those proffers in there dealing with set RPA limits would possibly end up in a conflict with future decisions of the Board of Zoning Appeals or conflicts with State and Federal permit requirements. Now looking at noise issues, the asphalt plant of course would be moving closer to the residential uses along Toluca Road. Currently, the asphalt plant is approximately 1,600 feet from the nearest residence; with the relocation they would be 800 feet away from the closest residence along Toluca Road. With the asphalt plant, there would be night operations that are proposed and then you have the access road that is proposed along the western edge of the site.

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There is the seventy-five foot buffer that is proposed along this side of the site and a ten to twenty foot berm. Staff will note in contrast to the approvals on the opposite side, on the eastern side of the quarry, the Hampton pit buffers that were approved as part of that Conditional Use Permit were 200 feet; there was a 200 foot requirement there. And also, I did not note in the staff report, on the Pollard Tract there was either a 400 to 300 foot natural buffer required on that. Staff will note that there is a little difference between the two sides and that on this western side under the subject site the residential uses here are lower density. They are three to five acres in size, so there is a little more separation from the residential uses to the site. And then also, in comparison, on the eastern side you have R-1 quarter acre lots with homes that basically abut right up to the property line and so you have much higher density much closer to the operations.

Ms. Kirkman: Excuse me, could I just clarify... is that the asphalt plant that the Planning Commission made some recommendations regarding expansion of operation hours within the last...

Mr. Zuraf: It was last year, yes.

Ms. Kirkman: So, they got the expansion of the operation hours and now it's going to move closer to the residential on Toluca?

Mr. Zuraf: That's their proposal, yes.

Ms. Kirkman: Okay, thank you.

Mr. Zuraf: Looking at some other issues with this proposal, the proposal, as we have discussed, would include the dedication of the entire site with the exception of the asphalt plant for public use upon completion of operations. The public use would be either for parks and recreation use and/or public reservoir. Also, staff will note that the Parks and Rec Department, they did request more detailed proffers that more so dealt with issues with how the site would be turned over to the County as far as issues with final grading, and details that the applicant felt was maybe too premature at this point given the timeframe that's proposed also in the proffers and that the site may not get turned over for many years. So, staff does want to point that out. The applicant did include a fiscal impact statement which does show that the residential uses will actually generate higher real estate tax revenue than the industrial land, but the report does note that the residential uses may end up having higher costs in providing public services to them. And also the impact statement does note that land dedication for future public use would eliminate substantial land acquisition costs in the future. Looking at the Comp Plan against this rezoning, the proposal would conform with the requested Comp Plan Amendments that we've discussed. The proposed buffers and berms would address the plan recommendation that industrial uses be well buffered from residential uses. Also staff would note the proposal does not comply fully with the resource protection policies that do recommend natural resources be preserved and this definitely is not doing that. The applicant has made several proffers with this request. They would be limiting uses only to the mineral extraction and asphalt manufacturing, would establish buffer and berm standards as discussed, they would limit access out through Vulcan Quarry Road onto 610, and then establish reclamation procedures. They would dedicate all portions of the quarry site for recreation and/or water reservoir use within seventy-five years of rezoning. Within that there are provisions that that seventy-five years could be extended if there is a common agreement between the applicant and a future Board of Supervisors. Also, they did establish some timelines for when rock extraction occurs and where; specifically, they state that once they commence rock extraction on the subject property, they would have to complete any work in the Hampton pit within five years. So, I

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guess the idea is there's not too much of an overlap. Also, that the quarry would be limited to daytime hours of operation and the asphalt plant would include still those nighttime hours which they did get approved last year up to 120 days per year; ensure blasting in accordance with DMME regulations; portions of the site that front Toluca would be subdivided off from the subject area as part of this request; they would notify property owners prior to land disturbance because it's envisioned that this site may actually not develop for many years following the rezoning approval. And then also that they set some guidelines and timelines as to when cultural resource surveys would occur. Also, then looking at summarizing this proposal, staff has evaluated the criteria to be considered for reclassifications in Section 28-206 of the Zoning Ordinance and, on balance, the positive aspects outweigh the negative aspects despite noise impacts and impacts to natural and cultural resources. The proximity to Quantico, the efforts made to buffer the uses and access to available mineral resources would make the site suitable for expansion. And staff recommends approval of the rezoning with proffers proposed, subject to adoption of the Comp Plan. Do you want me to go ahead and finish up the Conditional Use Permit?

Mr. Fields: Well, let's pause there and see if there are any questions for staff at this point before we go to the Conditional Use Permit.

Ms. Kirkman: Yes, Mr. Chair. So, since you've mentioned it twice now, the RPA limits have yet to be determined because staff hasn't... do we have our environmental planners here tonight?

Mr. Zuraf: No we do not.

Ms. Kirkman: Okay, because we might need them to answer this question. It says they haven't been determined because it's too wet for staff to go out and verify the limits. But, typically we have the reverse problem; there are drought conditions and it's too dry and it's contained within the methodology for determining the limits for the RPA there are ways to determine the limits when it's too dry. Are there also ways to determine the limits when it's too wet?

Mr. Zuraf: I cannot answer that.

Ms. Kirkman: Yeah, it's too bad we don't have the environmental planners here because I think that's an important question. I don't understand why it's possible to determine the limits when it's dry but not when it's wet. And I'm sure they have the technical knowledge to answer that question. You provided examples of buffers from noise and visual impacts. How do those buffers mitigate vibration impacts or are there other buffers proffered to mitigate the vibration impacts?

Mr. Zuraf: I don't have an answer for that.

Ms. Kirkman: Well, you reviewed the plan. Is there anything in there about mitigating or buffering for vibration impacts?

Mr. Zuraf: No, there is not.

Ms. Kirkman: Okay. Does this... you said that this conforms with the proposed Comp Plan Amendments. Does this rezoning application conform with the existing Comprehensive Plan?

Mr. Zuraf: No it does not.



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Ms. Kirkman: Okay. And you said that it's anticipated, that there's a proffer in there about notifying applicants prior to site disturbance because it's anticipated that the site may not be developed for many years. If that is the case, why is this rezoning in front of us now?

Mr. Zuraf: I'm going to defer that to the applicant.

Ms. Kirkman: Sure, I understand. And finally, you said that, in your staff report, that it makes... that the various things you cite make this suitable for expansion. But could you elaborate on why you think it is a suitable land use given the current Comprehensive Plan? Because that's really what we're looking at right now is not whether or not the land is suitable for expansion as a mine. That's to be determined by whoever is going to do it. We're more interested in the land use policies here.

Mr. Zuraf: Well, given the current Land Use Plan does not support it because it's recommended for resource protection going along the stream and then rural residential in the balance of the subject property. So, really the Comp Plan Amendment would have to be approved first for staff to really be able to recommend approval of the rezoning.

Ms. Kirkman: Okay, thank you.

Mr. Fields: Any other questions for staff regarding the rezoning? Alright, move onto the CUP presentation.

11. CUP2900290; Conditional Use Permit - Vulcan Construction Materials, LP - A request for a Conditional Use Permit for heavy industrial and heavy manufacturing uses not otherwise listed, specifically stone extraction and asphalt manufacturing, in an M-2, Heavy Industrial Zoning District on Assessor's Parcels 19-64 (portion) and 19-67T consisting of 115.74 acres, located on the west side of Vulcan Quarry Road, approximately 1,900 feet north of Garrisonville Road within the Rock Hill Election District. The request is to expand an existing stone extraction quarry and relocate an existing asphalt manufacturing plant. **(Time Limit: July 20, 2010)**

Mr. Zuraf: I'm almost finished.

Mr. Fields: Hang in there; you're almost done. You're doing good.

Mr. Zuraf: I've pretty much covered everything so if we can go back to the computer please. This is item 11, the request is for the Conditional Use Permit specifically for heavy industrial and heavy manufacturing uses not otherwise listed in an M-2 Heavy Industrial Zoning District. The specific proposal is stone extraction and asphalt manufacturing. This application actually has co-applicants, Vulcan Construction Materials and Lane Construction Corporation. Lane Construction Corporation is Virginia Paving, so that's why we have the co-applicants in this. And the extent of this Conditional Use Permit covers both the parcel 19-64 and also the 19-67T, which is the site of the current asphalt plant. The subject area in this request is 115.74 acres. This request would basically allow for the quarry operation to occur on this smaller 19-67T piece and then extend on to 19-64, and then would also allow for the relocation of the asphalt plant from this current site over onto 19-64 in this approximate location. And I'm just going to get right to the proposed conditions. In this request, there are several conditions, probably the most, it might be a record, the most conditions we have ever recommended. They are divided into different categories; there are some general conditions that apply to the entire site and then some more specific conditions that apply to the quarry or the asphalt plant

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themselves. The general conditions would limit access to the site through Vulcan Quarry Road. It would require the fencing on top of the berm. One thing I want to point out here is in staff's recommendation, it's condition number 3 and we recommended the eight foot fence with barbed wire on the top and the applicant actually is recommending that the, or suggesting that the barbed wire be removed from this condition. They see that as kind of overkill and it doesn't really suit their need. But then also cited that it ends up actually being a safety issue with wildlife; deer can actually jump those eight foot fences and it's not pretty. So, that's one of the requests that the applicant has as a change to this. Also, it would allow only one asphalt plant at any one time on this property and would allow access for staff to conduct water quality monitoring along Aquia Creek with certain provisions. And then, looking at the quarry conditions, the conditions would minimize the intensity and frequency of blasting, would require sound deadening features, establish blast monitoring standards, establish dust suppression standards, provide reclamation plan, require the reclamation plans be provided to the County, require load limits in trucks to be maintained, prohibit overnight maintenance in the quarry yard, and then also maintain contact information in the phone directory for any citizen inquiries or complaints. Then also provide periodic health screenings of employees. Many of these conditions were carried over from the Hampton Conditional Use Permit. Some of them do kind of follow some State guidelines, but I guess it's basically good to have it stated in the Conditional Use Permit just to make everybody aware of some of the things that have to occur. Looking at the asphalt plant conditions, it would limit the asphalt plant area identified on the plan, limit the hours of operation with no operations on Sunday, would allow for the nighttime hours up to 120 calendar days per year, require access roads and storage of interior to the berms that would be provided, require paving of the roads, travelways and parking areas, to limit noise and dust that might be generated, limit the access to the site as well to Vulcan Quarry Road, require stormwater control that would include some contaminant removal, also maintain existing landscape buffers along access roads, require ten foot setbacks of any retaining walls from the Critical Resource Protection Area as well. And to summarize, staff does believe the proposal meets the standards of issuance in Section 28-185(d) of the Zoning Ordinance and the conditions would mitigate negative impacts. Staff does recommend approval of the CUP with the recommended conditions subject to approval of the Comp Plan Amendment and Reclassification. And that ends my presentation.

Mr. Fields: Alright, are there any questions regarding the CUP for staff? Ms. Kirkman.

Ms. Kirkman: You stated one of the conditions was that it would require stormwater management control of contaminant removal. How does that differ from what's required under our current Stormwater Management Regulations? I assume we require that anyway.

Mr. Zuraf: Let me find that condition; one moment. Yes, it specifically states "such pond shall be designed to facilitate the removal of lighter-than-water contaminants, be lined with filter fabric, and be sized for at least a 10-year storm condition". So, the being lined with filter fabric may exceed what our current requirements may call for. I would have to check in on the removal of lighter-than-water contaminants; I can look into that.

Ms. Kirkman: Yes, I'd like to know how that condition differs from what is currently required because I think we've had discussions before about conditions or proffers that basically say we are going to comply with the law. And then how are the conditions that are offered under this different from the conditions that were most recently approved a year ago, which are the conditions that are now in effect?

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Mr. Zuraf: Some of the differences are that some of the items were actually proffered by the applicant that were previously conditions, so we didn't include those. I would have to look at them next to each other to... you know, we went through and made sure that things did not overlap from one to the other.

Ms. Kirkman: So, I guess my question is does this create an enforcement issue of things removed from conditions on the CUP over to proffers under the rezoning, because once the rezoning is granted, it's there for good. But the CUP can be revoked if the conditions aren't complied with. So does this limit, in any way future actions that the Board can take if it's placed as the proffer to the rezoning instead of the condition of the permit?

Mr. Harvey: Mr. Chairman and Ms. Kirkman, if I may... as Ms. Kirkman has pointed out, both run with the zoning of the property but a Conditional Use Permit can be revoked if there are violations of the conditions or Federal or State laws or County laws. The use permit in general would be enforced through a zoning inspection or a review of the conditions of the permit; same with the proffers. If the use permit went away, they would no longer be able to conduct those activities authorized by the use permit. If some of the factors that were in the use permit are in the rezoning, they are actually probably better off because those factors will carry over regardless of whether that use is still there or not.

Ms. Kirkman: But you would no longer have that as a basis for revoking the Conditional Use Permit, is that correct?

Mr. Harvey: If the Conditional Use Permit is already revoked, it wouldn't be necessary.

Ms. Kirkman: But if the condition is no longer part of the CUP...

Mr. Harvey: Oh, I see your point, yes, that is correct.

Ms. Kirkman: Could we get from staff a listing of what got moved from the CUP to the rezoning?

Mr. Harvey: Sure.

Mr. Zuraf: And there were some slight changes just to deal with the change in location under this, so basically we will provide a full notation of all changes.

Ms. Kirkman: Thank you.

Mr. Fields: Alright. Any other questions for Mr. Zuraf? Alright. It is now the turn of the applicant to address the Planning Commission.

Mr. Leming: Mr. Chairman, members of the Planning Commission... good evening. My name is Clark Leming; I am here on behalf of the applicant. I have asked Mike to pull up a particular graphic that he used in his presentation because I think it might be helpful background. I also appreciate your consolidating at least my presentation because I wasn't real clear anymore where the line was between the Comprehensive Plan Amendment and the rezoning at least. I thought it might be helpful to look at this at the moment since there were some questions about the timing of the extraction and the dedication of the pits that were involved here, and perhaps even some of the zonings that have occurred. The area that is currently being mined is just off to the right over in this area. This is what is

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referred to as the Hampton Tract. This was rezoned in 1991. It is considerably smaller than what would be the combined pit area over here across the... this is Embrey Run right here. There's a bridge that connects the two pits but the operations are separate, at least as far as the extraction is concerned. Material is extracted from the Hampton pit currently, it is trucked across this bridge, the crushing apparatus is located on the floor of the original pit or close thereabouts, where it remains stationary for a substantial period of time and will remain stationary. So the crushing occurs over here at the original pit location. The Hampton pit is what is currently being mined. And the Pollard Tract, which was also mentioned, is this area out in here. The Pollard Tract is not zoned for mining. It is zoned industrially but no mining is permitted on that property; storage is permitted, storage of gravel and other parts and ponding, washing, activities such as that. The original pit was zoned in 1976 and was mined until really only a few years ago, about 2002; is that right Martin? Martin is the Superintendent of the quarry in Stafford. I will introduce all these people to you in a minute. Then the extraction operation switched over to the Hampton pit; that was rezoned as I indicated in 1991. And there is a proffer with the Hampton pit that indicates that it will, when completed, be dedicated to the County for use as a reservoir. However, there is no date for that conveyance in the 1991 proffers. The proposed proffers that run with the new zoning do contain a date for that. They do set that date twenty-five years from the date of rezoning. To give you some idea of the capacity of this pit over here, this is about two billion to 2.6 billion gallons of water. That is slightly smaller than the Rocky Pen Reservoir; about half the size of the Rocky Pen Reservoir. The original pit contains no proffer with regard to uses as a reservoir. With the addition of what we will refer to here as the Martin Jones Tract, what is outlined in red, there is a proffer that would run with that that would require the dedication of what would be the consolidated pit, which would include the original pit plus the mining in the new area within seventy-five years of the date of rezoning, so both of those are nailed down specifically. Now, with regard to timing, the current extraction is occurring on the Hampton pit. There are about twenty-five years, nobody knows exactly what the economy will do, but approximately twenty-five years of mining extraction activities remaining on the Hampton Tract. There are also reserves within the original pit. There are probably twenty to twenty-five years, again depending very much on the market, of reserve left in the original pit area, particularly towards the western wall. What the addition would do is to add reserves that would extend the life of the operation for perhaps another twenty-five years beyond that. Now, as far as when anything will happen on this tract, that would occur probably within thirty years; not the extraction, but the development of the site. Keep in mind over here that there are proposed things that would have to be done before any mining could occur, such as the location of the berm, the relocation of the asphalt plant, the location of the haul road and the diversion of the RPA area over here. There is a core that is along 17 that was approved in 1989; that would serve, when developed, a different east/west market, not the north/south market. Believe it or not, every one of us uses about ten to twelve tons of stone per year. How do we use that? We use that in roads, houses, schools, commercial parking lot... everything that gets built has stone in it. So there is a continuing demand for stone across the board. One of Vulcan's efforts, wherever it's conducting a mining operation, is to investigate adjacent properties to determine whether existing facilities can be expanded, whether reserves are available on nearby parcels, because that is a considerably more efficient approach to an operation like this than going out, at some point in time whenever that is, and locating an additional area where there is viable rock, transportation network, development costs of these sites are incredibly expensive as you can imagine. Vulcan has at the Stafford site expanded to the east twice, as I have indicated to you, the Pollard Tract and the Hampton Tract. There is no ability to expand to the north; Quantico is to the north. Further to the east are subdivisions of Raintree, Country Ridge, so there's no real room to expand there. Up to the south is Garrisonville Road. The only area that is undeveloped currently surrounding Vulcan is that area to the west. Why do it now? Vulcan, as part of it's standing operating procedures as I indicated, looks for available reserves. Once that property is developed, once

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something else is place on it, those reserves are infinitely more difficult to get to than previously and substantially more costly, which affects everybody, not just Vulcan Materials but everybody that needs stone. So, what is occurring here is something that occurs at some point in time at virtually every established major quarry operation; an investigation of surrounding properties to determine the viability for mining for additional reserves. All Vulcan seems to do here is increase its inventory so that the operation remains intact into the future. Now, put those general comments to the side for a minute and turn specifically to the Comprehensive Plan Amendment. The way Comp Plan Amendments are handled in this County is somewhat different from a lot of counties. The statute that requires Comprehensive Plans and Comprehensive Plan developments indicates that they are to be general in nature and show the approximate location of things. The custom in this County has been to treat the Comprehensive Plan almost like a Zoning Ordinance in a sense that the Comprehensive Plan boundaries are actually tied to particular parcels and locations. So that is as it is. That's the way things have evolved here. I don't believe that's what's required by State law but that is the custom here. So anytime an application comes in that is arguably inconsistent with the Comprehensive Plan, and I point out that this is immediately adjacent to what is shown for heavy industrial use in the existing Comprehensive Plan, anytime that happens the operating procedure for staff is to say well, we need a Comprehensive Plan to go with it, a Comprehensive Plan Amendment. So, that is what you have before you; a Comprehensive Plan Amendment that would focus on this particular property and the rationale for changing the land use designation for that property from Rural Residential and Resource Protection Area to Heavy Industrial and Resource Protection Area. So that is why we stand before you. The text amendment that we have proposed does buttress what is currently in your Comprehensive Plan. I think the zoning is arguably inconsistent with your Comprehensive Plan simply because there's a different land use designation for this particular parcel than what you show in your current Comprehensive Plan. We also all understand how long it's taken this County to update its Comprehensive Plan. So, anytime a zoning application comes forward, that is simply how it has to be handled; and that's what we've done here. I would like to emphasize that State law requires that the County include mineral resources in its Comprehensive Plan. There are two relevant Code Sections, 15.2-2224 requires that the County include the mineral resources in its Comp Plan and if the County hasn't done its own survey then you've got to defer to DMME which is what Mike was talking about. The resources are here. These are finite resources. This kind of granite rock, which is substantially different... and we can get into this in some detail if you'd like... from sand and gravel operations down on the Rappahannock is not found everywhere in the County. There are veins of it that run through Stafford County as the DMME map shows. So, you've got to go where the resources are, and the advantage of this particular location is not only where the resources are, it's right next door to an existing facility that mines this particular granite. The text amendment would bring the Comprehensive Plan into compliance with the proposal. Sum and substance; that's the procedure that we followed here in this County and that's what we've been asked to do in these circumstances. The other Code Section requires that when you develop your Comprehensive Plan, this is Code Section 15.2-2223, that such resources be taken into consideration as a factor in developing the Comprehensive Plan. So that when you're doing so, you designate those areas of the County where the resources are located and preserve those areas so that at some point you can get to those resources and they can be used for the purpose that they are needed. Now, with regard to the rezoning application, we've talked briefly about the advantages of this application to the applicant. We have an existing mining operation that is very expensive to establish. It has been ongoing in Stafford County, very successfully, since 1978; zoned in '76, commenced operations in '78. Vulcan has expanded without mishap. It has complied with everything the County has put into place that governs its operation and, at this point in time, it simply makes sense to try to tie up additional land and the additional resources for the inventory that is contained there. So, it's advantageous to Vulcan. We have an existing transportation

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network, we have a light that has come in on 610 to govern the truck traffic in and out of the facility since Vulcan has been there, and Vulcan, of course, is the one primarily responsible for putting that light in. The additional area assures that there is going to be a continuous supply of stone and the derivative materials that are necessary for all of us. Now, advantages to the County. The major long term advantage to the County is the one that we talked about a few moments ago. Rock quarries are excellent reservoirs because they can't be penetrated. They are large containment bowls. They go incredibly deep into the ground, sometimes 600 feet deep. Compare that to what's being done at Rocky Pen Reservoir. The Rocky Pen Reservoir is very broad because you can't go deep. The rock quarry establishes a granite basin that holds water; water cannot penetrate and is used by many jurisdictions as reservoirs. With this particular application, you get two of them. You get one in twenty-five years and one in seventy-five years. I point out that the one in twenty-five years is consistent with the County's long term plans as to when it will need a new reservoir. The reservoir is located... both of these will be located adjacent to Aquia Creek so that there would be, during high water periods, the possibility of skimming which is what is used on the Rappahannock River for the Rocky Pen Reservoir. In addition to that, there is also the possibility of interconnecting the storage capacity of these reservoirs with what we already have at Smith Lake, so that excess water during high water times can be maintained and these upper reservoirs, you don't have to release water as what happens now during heavy rain periods and the dam has to be opened to release water because there's no place to keep it right now. So, major long term benefit. Obviously, it already provides the resources that the County needs now and the County continues to need. This is not a pro-growth issue or an anti-growth issue. What it comes down to is a natural resource that we all use, that we all need and that is available right here in Stafford County so that you do not incur the same cost of shipping and trucking the materials from some other location, which simply adds to the price. For some time now, I think some of you are aware that I live in this location near Vulcan, we've heard that Quantico doesn't want any houses or no more houses on their parameter to the south. That causes complaints, people don't understand what it is that they're getting into. The planes do come in at treetop level across my farm. I don't object; I think it makes me feel safe. But a lot of people don't like that. There is a lot of noise from Quantico and, as an adjacent resident, let me point out substantially more noise coming from Quantico than ever comes from Vulcan Materials. So, it does make some sense to consider what uses are compatible with Quantico since it's there and it's not going anywhere. In fact, I think that was a component of at least the draft Comprehensive Plan that came forward last fall. So, it is consistent with I think what probably is now both the County and Quantico's desire to limit additional residential development in this area. I think when you weigh the affect on the infrastructure and the impacts of residential development versus the tax revenue that comes in from an operation like this, the County does come out ahead. I think probably most would say that about the best that most residential housing does is break even and that most of the time the County ends up somewhat in the deficit there. There are a few proffers that I would like to highlight. Let me spend a minute talking about the asphalt plant relocation. The asphalt plant is right in the middle of the new area that would be mined up against the wall. The asphalt plant right now is on the western side of the property. It immediately abuts the property that Vulcan wants to purchase for the additional reserves. Theoretically, houses could come right up to that property line if they so desire. That area is zoned A-1 like all of the area down Toluca Road that currently comes all the way up to the Vulcan property line and the asphalt plant. There is no berm, there is no buffer, there is no nothing there right now. And the haul road is in that location right now because that's what leads to the asphalt plant. What this does effectively is to shift things to the west but, what it does is to put a twenty foot berm at the asphalt location, a berm all the way along the property line and, in addition to that, the important thing to recognize about this berm is that it's not a berm that just goes up; it's also one that goes down because the property at the asphalt location is approximately thirty to forty feet below the adjacent property to

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the west. We've done some cross sections; you don't even see the asphalt plant silo because it's so far down into the ground. So, if you're looking to the west from the Vulcan Tract at what would be the new berm from the depressed road area, this is the access road, what you see is not a ten foot berm. What you see is a thirty to forty foot berm because you are that much below the grade of the adjacent properties. That is the primary basis and that's all that's needed. That is as effective sound barrier as we can possibly provide. And the depression, our position is that that actually works much more effectively than a berm that goes up into the sky, such as what was put next to the Hampton Tract and what is between my property and Vulcan Materials. Those berms are high for a couple of reasons; number 1 the ground is fairly flat. The quarry operation and the nearby residences are at the same level. Vulcan also had a great deal of additional soil they had to remove to get to the stone and they add that to the top of the berm, so that the berms get higher and higher above what is required by any of the proffers or ordinances which ran with the original zonings. The asphalt plant essentially moves 500 feet away from where it is right now. But it moves back further toward the northern edge of the property and, while it can be said that it's somewhat closer to one or two of the residences there, any location for the asphalt plant to the west would be closer to certain residences. But there is a substantial berm buffer area in between those and that's the place, where the asphalt plant is, that's the lowest location of any of the operation. We have proffered to do architectural and archaeological surveys; I'm not sure whether that loop got completely closed in the presentation. But we're doing the Phase 1 survey of the property and an architectural survey of the I-House that is on the property, so both of those will be covered. We have put together any number of view sheds showing what you see from the west. Obviously the Vulcan Materials has to comply with all County ordinances including your noise ordinance. I'm not aware of any violation of noise ordinances by this operation at any time in their history. They've got to continue to do that. They know how to do that. So that standard is out there as well. I also would like to note that the crushing operation will stay in its present location on the original tract. There will be no crushing that occurs on the Martin Jones Tract, the additional land that would come in here; all that remains in its current location. I would also point out that prevailing winds basically carry noise from the west to the east, not from the east to the west. Occasionally that happens but most of the time it goes from the west to the east. Some of you may know that Vulcan... if you haven't visited the site, you need to come see it. It's an impressive operation; it's well run. If you haven't seen it, it would be hard to imagine what's there from 610. But it would be helpful to see the site. And Martin would be happy to accommodate you at any time along those lines. But Vulcan has been in this County now for four decades, going on four decades, runs a responsible operation and is simply trying to ensure it's going to be here for the foreseeable future with this application. I know some of you had a lot of questions; I tried to touch on some of them. I would like to introduce a couple of people here. This is Tom Carroll. Tom is the Director of Business Development for the Mideast Division and he is the one that is in charge of this application and overseeing it and being sure that all of the questions get answered. We have engineers here; this is in-house engineer we'll call him, Walter Beck. Martin is the Superintendent for the local operation here. Dale some of you may know from Dewberry and Davis, and there are a bunch of other assorted folks in the back that are here and can help answer your questions. So I'll stop talking. Let me ask this, Tom, is there anything else that you would like to add before I sit down? Okay, Tom is happy to answer questions. Alright, I'll stop. Mr. Fields: Alright, are there any questions for the applicant at this time? Ms. Kirkman. I have a couple but I will wait.

Ms. Kirkman: Please, I've gone first each time; why don't you go.

Mr. Fields: You keep asking all my questions; I don't have anything left to ask. Did you have any insight on the stormwater issue? The condition with the extra pond? Because I noticed it looked like,

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of course, we have the issue with the diversion of the stream and it certainly looked like the asphalt plant and some of the other operations were very, very close to the RPAs. Can you address that stormwater?

Mr. Leming: But we have to comply with the stormwater ordinance.

Mr. Fields: Sure, but what we are asking is, is what you're doing simply complying with the ordinance or are you doing things in excess of the current ordinance regarding that stormwater?

Mr. Leming: Walter, you might be a good person to address that specifically.

Mr. Beck: Walter Beck, Vulcan Materials; I'm an environmental engineer. I read that condition and I didn't write the condition obviously, but what I take out of it is it's just going to be compliance with the current ordinances and requirement of the stormwater and erosions and control regulations.

Mr. Fields: You're not aware of nor are you suggesting that you're going to above and beyond any of this?

Mr. Beck: No, it's a condition obviously that was for the asphalt plant and not for the quarry operations, so it's probably a condition that came from the asphalt plant's conditions already. So, for me to speculate where it came from, I don't know. But nothing that I read in there would indicate to me that they are going to go above and beyond what's already required within the County.

Mr. Fields: This is not a typically industrialized county and I guess this will have to wait for a future session when we have our people here. I guess my concern, (a) would be are you putting a condition that's anything other than compliance with the Code and (b) do we need to consider that. I mean, our stormwater code is great. As a matter of fact, there are many aspects of our stormwater code that staff is very proud of as being a leader in the Commonwealth. But, once again, it's been developed primarily based on residential commercial use and not fairly heavy industrial. You know, an asphalt plant has a lot of things in it and around it that a target or a subdivision don't. So I am just wondering if you can address any information regarding that.

Mr. Leming: I'm not sure Walter can even add to that. Your staff can certainly advise you on that. This condition has run with the asphalt plant since 1989. I'm not aware of any stormwater issues with regard to the asphalt plant. There are certainly none involving Vulcan. Vulcan has extensive ponds, the primary purpose of which is to simply let sediment settle so the water is clear. As far as the diversion is concerned, the head point of the diversion collects mainly stormwater not from Vulcan or the asphalt plant, but from 610 and the residential subdivisions up there. That's the water that we are proposing to divert around the quarry site. Within the quarry site, the asphalt plant and the quarry itself would be governed by State and local stormwater regulations and DMME regulations as well.

Mr. Fields: I have another question. Thank you. I think we are obviously going to have to still get a little bit more from the County. Something that we haven't quite addressed, and maybe it's a non-issue but it's certainly something that pops to my head and at least we can try to glance at is, of course, it's been operating and has been for many, many years but, of course, with increased operations. And I wasn't clear from these maps, what is the potential with interaction with the water table and the aquifers in that area by carving out a whole new section of the mining operation? Obviously you are literally slicing through the geology of the area. Is that granite that you're mining already essentially



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so impervious that it's out of the flow of groundwater and the Piedmont aquifers there or is there some potential interaction?

Mr. Leming: The granite is particularly impervious and we can give you considerable detail on that. This is the kind of rock that Vulcan looks for regionally. Let Tom give you information on it.

Mr. Fields: Sure. And I've never worked in a mine so I don't know whether it's literally one giant block of granite or it has seams and layers of water that transfer and transport through it.

Mr. Carroll: Again, my name is Tom Carroll with Vulcan Materials. It's more the former than the latter. You're dealing with a large igneous body basically and these things are... when we test to be able to supply construction aggregate, asphalt is ninety-five percent stone, concrete is about eighty to eighty-five percent stone. So, you think of everything you use throughout the County, schools, churches, houses, everything else, that's where the need and demand comes from for that particular product. But when we go in and explore for this, we do extensive testing of the rock to make sure that it meets FHWA, VDOT standards for soundness, consistency, durability, things along those lines. And what makes this a very good quality construction aggregate is that the rock is very competent, it doesn't transmit water any great distances; we actually have many operations. We have one on the James River, we have one up on the Occoquan and we're within 200 feet, 300 feet of the river and several hundred feet below it and we don't have water coming in. We actually have producing wells for potable water supply and things like that, sanitary sewer, something along our lines within 100 feet of our rock faces, and we have plenty of supply. Potable water supply wells and a granite water terrain get very, very small influence around the well site. In fact, in this situation, if you put more homes on the Martin Jones Tract or either more residential development over there, you will probably see a greater demand of interference of private wells than what you would ever see from our operation. And we just got a long history of these types of facilities operating and it's just not a factor that you see. The second part of that is with the State, with their review of our permitting, we will have to do a permit modification obviously with the State Mine Permit to add to that. That is one of the other criteria that they look at and we're very comfortable and confident that we will be able to make their standards as well.

Mr. Fields: Okay, thank you; very informative, thanks. Once again, I understand the logic of getting ahead of the curve on the rezoning. I'm just wondering, is there a specific timing issue on this?

Mr. Carroll: Well, the availability of the land and the willingness of the owners of the land to sell.

Mr. Fields: Okay. I understand you can purchase the land, then acquiring all of the permitting to begin operations although operations may be decades in the future; I'm just wondering where the urgency for the rezoning/CUP at this date is. I certainly understand that acquiring the land for future use makes a lot of sense, but I'm not sure... you'll have to maybe help me understand why acquiring and then there's an urgency to get rezoned and conditions on it.

Mr. Carroll: Well, for the simple fact that it's a very large capital investment for us and we've got to make sure that we've got the right to be able to use it before we expend those capital dollars to do so.

Mr. Fields: So, your contract on the land is conditional upon, is contingent upon this rezoning and Conditional Use Permit?

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Mr. Carroll: Yes.

Mr. Fields: So, you're not purchasing the land unless all this goes through.

Mr. Carroll: That is correct.

Mr. Fields: I can't blame you, but I'm just understanding that that's why there's an urgency.

Mr. Carroll: As with most large developments. And, as Mr. Leming said, if I may add on that, that's why the Virginia Legislature a number of years ago made those changes to the Comprehensive Plan requirements for counties is that these are finite resources, they are very much localized; they are usually within fifteen, twenty, twenty-five miles of the point of production. So you get into transportation costs and everything else associated with having to import those into areas that don't have them. And it's a huge additional cost when you look at the markets for our materials; it's, in rough terms, about a third residential and about a third into commercial and about a third into public construction. And that's schools, water treatment plants, you know, other types of infrastructure, roads, etcetera. So, when you've got finite public dollars that you've got to be able to spend, and I think most county budgets are seeing that across the United States and I think Virginia is very much used to that as well in recent years, then you've got that opportunity to be able to keep that resource locally; be able to use it, get the tax base off of the jobs and the infrastructure that is already here in place. And that's basically kind of the big fifty thousand foot view.

Mr. Fields: So most of the stone that is currently mined there in Vulcan is currently used in Stafford or in the Fredericksburg region?

Mr. Carroll: Oh yes.

Mr. Fields: Okay. I think that's all I have for questions. Ms. Kirkman, do you have follow-up questions?

Ms. Kirkman: I do and if that gentleman could... I have a couple follow-up questions for him. So, you said most of the stone ends up being used fifteen to twenty miles within the quarry?

Mr. Carroll: Typically. It's a very high weight to... the bottom line is it costs a lot to transport it any great distances.

Ms. Kirkman: So that means you're anticipating fairly high rates of growth in the Rock Hill area?

Mr. Carroll: No. Again, the number that Clark referred to as a national number, it's not asking for new residents into the area but just to keep and maintain the standard of living that you have today, on an annual consumption basis, is on national averages and it pretty much holds true in this area as well. It's ten to twelve tons per person per year.

Ms. Kirkman: No, no, no. I was referring to the fact that you said most of the stone ends up getting used fifteen to twenty miles around the quarry. And if you do a perimeter around the quarry, that's not an area that has a lot of growth right now. Are you anticipating that there will be a lot of future growth in that area to use that?

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Mr. Carroll: Well, for instance, a lot of our products go out on the I-95 corridor with BRAC realignment, the housing, the infrastructure associated with that. So, again, the material typically... again, fifteen to twenty to twenty-five miles is the range; you draw a circle around it and that is, I hate to draw circles, but you have also the issues of the existing transportation infrastructure in the County. Again, if this resource isn't added to our existing inventory, as soon as a CVS or other types of development go on top of it, it's essentially taken out of inventory; it's gone. We can't access it in the future.

Ms. Kirkman: So, there's nothing to prohibit you from acquiring the property now and if this is such a great benefit to the County and there's such a need for this finite limited resource, why would there be any trouble getting the rezoning approved in the future?

Mr. Carroll: I'd ask the same question, why should there be one now?

Ms. Kirkman: Well, I'm trying to understand why it's being done now when very clearly it's been stated by staff and yourself...

Mr. Leming: He answered your question. He answered your question a few minutes ago. There's no point to their buying the property now unless they can be assured that they can use it for the purposes it's intended. It's as simple as that.

Ms. Kirkman: Right, well, my follow-up question was, if it's this good of a benefit to the County, is there any reason why you would doubt that you would be able to get a rezoning approved sometime in the future?

Mr. Leming: Nobody has a crystal ball and they wouldn't buy the property unless they know it can be rezoned at the time they buy the property. It's that simple.

Mr. Carroll: Exactly.

Ms. Kirkman: Okay. Well, I'm sorry I didn't get to hear directly from you sir on that.

Mr. Leming: You did hear it from him.

Mr. Carroll: That's my exact response. I think it's just... the Vice-Chairman indicated that he didn't blame us and that's very typical in land transactions. You know, you buy it based on something that you hope to do in the future, you want to have some certainty to the dollars that you invest. Our shareholders expect us...

Mr. Fields: I acknowledged that I understood your position, it wasn't necessarily an endorsement of it.

Mr. Carroll: Okay, that's okay.

Mr. Fields: But that's fair enough.

Ms. Kirkman: So, I did want... Mr. Leming, I wanted to go back. You cited the State requirements around the Comp Plan and mineral extraction. I do remember when we developed the draft of the Comprehensive Plan, Mr. Zuraf bringing that to our attention; I seem to recall looking at that. But I

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don't recall it having any mandate that the Comprehensive Plan allow extraction in all of the areas where those minerals are present.

Mr. Leming: What the Code Section does is to encourage the counties to identify the areas that are suitable for such extraction and to include them as part of your Comprehensive Plan.

Ms. Kirkman: Okay, but there's no mandate to allow the mining itself.

Mr. Leming: There's no mandate on anything in the State Code other than doing the Comprehensive Plan and updating it.

Ms. Kirkman: Alright, then one of the things I think got dropped and didn't get addressed, and since you know the history of the property I am sure you will be able to address it was the issue about public water use. And, again, it's very complicated on all these properties so if you could please explain.

Mr. Leming: That condition runs with the Hampton Tract. The Hampton Tract doesn't use any public water. There is no such condition that runs with the original tract. The only thing they use water for is their office. They have a sink, they have a toilet... a kitchen? Yeah, they have an employee room at the office. That's the only thing they use public water for. And they've used it historically since the site was originally set up.

Ms. Kirkman: So, there won't be any need for water for the extraction or processing?

Mr. Leming: No, they use all their own water. They store water, they collect water, all that is contained onsite.

Ms. Kirkman: Okay. Thank you for clarifying that. Now, do your engineers, Dewberry, anybody have an answer to the question about why staff is able to verify RPA boundaries when it's dry but not when it's wet?

Mr. Leming: We did the study, so...

Ms. Kirkman: Well, I didn't know if it was Dewberry or if you hired WEG for that.

Mr. Leming: Do we have an answer to the question?

Mr. Carroll: We can't answer for their staff. I just know that our study was done at a different time of year, I believe, and has been submitted to the staff. And I think what Mr. Zuraf was talking about was a verification of the report that we submitted and the inclement weather situations that you've had with snow and a few other things.

Ms. Kirkman: Okay, let me try again. Do you have your environmental engineer here tonight?

Mr. Leming: We do but they don't know the answer to your question. That was what I just asked.

Ms. Kirkman: Is he the fellow that did the limits?

Mr. Leming: No.

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Ms. Kirkman: Do you have *that* fellow here tonight?

Mr. Leming: No.

Ms. Kirkman: Okay. Again, I haven't heard the answer yet to what buffers are in place regarding the vibrations from the blasting.

Mr. Leming: I don't think there's any significant difference between sound and vibration. I'm not sure what vibration you're talking about. Vulcan does not do things that cause vibrations.

Ms. Kirkman: Blasting... I'm sorry...

Mr. Carroll: Let me address that. The State standards are actually very specific with respect to both sound and ground vibration. And those standards have been based on decades of research, both on a national academic and federal level. The State enforces those standards, we've complied with those standards, they protect adjacent/adjoining properties, and we have seismographs that are positioned around our facility that record each one of our blast events. And we have a permanent record of those. They are available for inspection by either the County or the State.

Ms. Kirkman: So, there's nothing additional that you're offering around buffers for vibration?

Mr. Carroll: No, because the standards actually say... they're performance oriented; they're not a distance per se. They actually say you cannot exceed this limit regardless of whether the home is five feet away or five miles away.

Ms. Kirkman: Right. But the thing I don't know about and maybe staff can get this to us or if we have any adjacent neighbors they could speak to this, the standard may be what it is but it may not be acceptable to adjacent property owners. And that's what I'm trying to understand. In the same way that we have a noise ordinance which is many people might arguably say is not acceptable for residential areas.

Mr. Carroll: It's actually a standard that is used throughout the Commonwealth of Virginia and is applied to all of these types of mining operations, and is actually a standard that is used throughout the nation. So it's based on very good sound science.

Ms. Kirkman: Could you get us some more information on that?

Mr. Carroll: Surely.

Ms. Kirkman: That'd be great. Okay, that's all Mr. Chair. Thank you.

Mr. Fields: Alright, any other questions for the applicant or staff? Alright, in that case, we will now open the public hearing. Anyone that wishes to speak for or against the amendment to the Comprehensive Plan, the rezoning of the property, or the Conditional Use Permit for the property, we're speaking about all three things, we will vote on these separately but we will take comments on them collectively. Please come forward and state your name and address for the record and you have three minutes; the green light says go, the yellow light says one minute, the red light says please wrap it up.

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Ms. Kirkman: Excuse me, Mr. Chair. Before we open the public hearing, I had wondered if, and I know in the BZA we've done this. I don't know... I've seen it occasionally done on the Planning Commission. Given that the Commissioner from the district is not here, if we wanted to open the public hearing but then make a decision about... Gail, I'm sure you know the appropriate parliamentary to continuing the hearing to the next meeting so that the Commissioner from the district can have the opportunity to hear.

Mrs. Roberts: You can certainly keep the hearing open.

Ms. Kirkman: Okay, that's the term?

Mrs. Roberts: And, of course, Mr. Howard, who was aware that this was on the agenda and couldn't be here and didn't want the vote taken, could review the minutes which I am sure he would, but either one is appropriate.

Ms. Kirkman: Okay, thank you.

Mr. Fields: The continuation of the public hearing actually then would supersede even a motion to defer, right? Because you're not taking any action on it really, everybody that has anything to say has said it but you are not closing the hearing, you are just moving it onto the next meeting.

Mrs. Roberts: You're not ending the hearing, correct.

Mr. Hirons: Mr. Chairman and Mrs. Roberts, would it then have to be re-advertised?

Ms. Kirkman: No.

Mrs. Roberts: No. It would be continued by the Chairman, Mr. Fields, at a date certain.

Mr. Fields: Okay. Well, I think that's a good idea. Since we are not going to make a decision on it tonight, that makes about as much sense as any. With that, I will open the public hearing. Is there anyone who wishes to speak for or against? Please come forward, don't be shy. You don't have to raise your hand or anything, just leap up to the microphone.

Mr. Martin: My name is George Martin. I live on the, I guess the west side of the quarry. I've been there for approximately seventeen years and I've listened to the noise that Vulcan produces. And I'm sure you want to know from the residents as to the vibration. Really, we don't feel much at all. Actually I feel more from Quantico with the blasting or the bombing or whatever they do over there. The blasting part that Vulcan does, you just may hear a slight muffle. It's not anything irritating to me or my family and we spend a lot of time outside. The noise impact just doesn't really bother us. We have the adjoining property to Vulcan and throughout the years we've really never really had a problem. Sometimes we have a little problem with nighttime with the asphalt plant with, you know, the running of the night operations. We may hear a bump or two here and there but nothing that really keeps you up at night or anything like that. The dust and things like that that they produce over there, they are really efficient about keeping the dust down and running the thing where you really don't know they're there unless you actually know where the location of it is. Where I live, I'm directly across from the asphalt plant. During the wintertime when the leaves are not there I can just barely see the light up on the pole over there. I really can't see the asphalt plant itself. But, as a long time

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resident, I have no objection as to what they're proposing here. It's okay with me. Like I say, I get more noise from Quantico than what I would through Vulcan. And that's pretty much what I got. If there's any other questions...

Mr. Fields: During the public hearing we just receive comments. But we appreciate you enlightening us and sharing that with us.

Mr. Martin: Thank you for your time.

Mr. Fields: Thank you. Is there anybody else that would like to make a comment to the Planning Commission? Alright, I guess everybody has their questions answered. So, what we'll do then is we will not bring this back to the Commission at this point. There were no questions raised that the applicant or staff needs to address, so, at this point, we will simply keep the public hearing open and continue it to 7:30 p.m. on May 5<sup>th</sup>.

Mrs. Roberts: You need a motion.

Mr. Fields: We need a motion and a vote? Okay. Alright, is there a motion to continue the public hearing to May 5<sup>th</sup>?

Ms. Kirkman: So moved.

Mr. Fields: Moved by Ms. Kirkman.

Mrs. Roberts: Mr. Chairman, I'm sorry. I forgot there were three separate items. You need a motion for all of them.

Mr. Fields: Right, that's correct. Okay, so item number 9, the Comp Plan Amendment; motion to continue the public hearing to May 5<sup>th</sup>?

Mr. Rhodes: So moved.

Mr. Fields: Okay.

Mr. Mitchell: Second.

Mr. Fields: Second. Alright. Any discussion on the motion? Alright, all those in favor signify by saying aye.

Mr. Rhodes: Aye.

Mrs. Hazard: Aye.

Mr. Mitchell: Aye.

Ms. Kirkman: Aye.

Mr. Hirons: Aye.

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Mr. Fields: Aye. Opposed? Alright, the motion passes 6 with 1 absent. Next is a motion to continue the public hearing on the rezoning to May 5<sup>th</sup>?

Mr. Rhodes: So moved.

Mr. Mitchell: Second.

Mr. Fields: Seconded. Any discussion? Alright, all those in favor signify by saying aye.

Mr. Rhodes: Aye.

Mrs. Hazard: Aye.

Mr. Mitchell: Aye.

Ms. Kirkman: Aye.

Mr. Hirons: Aye.

Mr. Fields: Aye. Opposed? No? Alright, and the third motion is a motion to continue the public hearing on the Conditional Use Permit to May 5<sup>th</sup>.

Mr. Rhodes: So moved.

Mr. Mitchell: Second.

Mr. Fields: Any discussion? All those in favor signify by saying aye.

Mr. Rhodes: Aye.

Mrs. Hazard: Aye.

Mr. Mitchell: Aye.

Ms. Kirkman: Aye.

Mr. Hirons: Aye.

Mr. Fields: Aye. Opposed? Alright, thank you. Thank you very much staff, thank you very much to the applicant and the whole entourage of people you brought with you. We'll continue to May 5<sup>th</sup>. I am sure Mr. Howard will be interested in the proceedings and then we will, I guess, move forward to whether we move at that point. We've been at it for a while, while the room clears let's take till twenty of, take a break.

12. Amendment to Zoning Ordinance - Amendment to Section 28-273, Nonconforming Structures, of the Zoning Ordinance pursuant to proposed Ordinance O10-04. This will provide the owner of a nonconforming building damaged or destroyed by a natural disaster or other act of God ability to repair, rebuild, or replace such building to eliminate or reduce the nonconformity.



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This amendment to the Stafford County Code will be consistent with the revisions in the Virginia State Code. **(Time Limit: June 1, 2010)**

The meeting reconvened at 9:43 p.m.

Mr. Fields: We're back in session. Number 12, Amendment to the Zoning Ordinance, Nonconforming Structures.

Mr. Harvey: Mr. Chairman, I'll be making the presentation. At the meeting on February 16, the Board of Supervisors referred this Ordinance to the Planning Commission. It would change the standards regarding nonconforming structures within the County and it would allow our local ordinance to comply with State Code standards. Basically what it does is it allows any structure that's been destroyed by a natural disaster to be completely rebuilt if it's within the time period of a Federal Declaration of Disaster. The applicant would have two years in which to complete the rebuild where they start the process of getting permits. Under the current nonconforming standards, up to fifty percent of the structure can be replaced within a two year time period if it was damaged. But this would allow it to be 100 percent if it's during a Federal Disaster Declaration. And staff recommends approval of the proposed Ordinance.

Mr. Fields: Okay. Are there any questions for staff?

Ms. Kirkman: I just have one. When you say this brings it in compliance with State Code, are these optional changes in the State Code or what's the State Code?

Mrs. Roberts: No, mandatory.

Ms. Kirkman: Okay, thank you.

Mr. Fields: I believe we discovered this, right, when we were doing the Reservoir Protection Overlay.

Mrs. Roberts: Actually Ms. Kirkman is the one who pointed that out.

Ms. Kirkman: Could be; there's been more than one issue that's come before us.

Mr. Fields: I remember working through this on several occasions. Alrighty, officially I will open the public hearing. Seeing that nobody is here to speak, I will close the public hearing and bring this back to the Commission. What is the will of the Commission on this? Do I have a motion for approval?

Mr. Mitchell: Motion for approval.

Mr. Rhodes: Second.

Mr. Fields: Motion by Mr. Mitchell, second by Mr. Rhodes. Any discussion? Alright, hearing none, all those in favor of the Ordinance signify by saying aye.

Mr. Rhodes: Aye.

Mrs. Hazard: Aye.

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Mr. Mitchell: Aye.

Ms. Kirkman: Aye.

Mr. Hirons: Aye.

Mr. Fields: Aye. Those opposed? So the Planning Commission recommends to the Board of Supervisors we approve this Ordinance. Okay, that takes us to the end of the public hearings. Mr. Planning Director, you concluded all of your items?

Mr. Harvey: Yes sir.

**COUNTY ATTORNEY'S REPORT**

Mr. Fields: Madam County Attorney?

Mrs. Roberts: Nothing.

**COMMITTEE REPORTS**

**CHAIRMAN'S REPORT**

**OTHER BUSINESS**

**13. Executive Session**

Mr. Fields: We have an executive session scheduled; do we need to go into executive session?

Mrs. Roberts: I don't believe we do. Everything that was appropriate to be discussed in the executive session regarding the litigation and the proposed settlement was discussed. I don't think there was anything new that would be appropriate.

Mr. Fields: Okay.

Mr. Harvey: Mr. Chairman, staff has provided you in your background report copies of information that was requested at the last meeting. Specifically, staff reports regarding the Sycamore Hills Preliminary Plan, minutes from those meetings that the Planning Commission considered the application, a summary of the timeline for which the plan was under review, also other by-right subdivisions that the Planning Commission reviewed from January 8<sup>th</sup> to the present and the actions that were taken, as well as letters to the applicants that had projects that were denied by the Commission.

Mr. Fields: Okay. Is there a decision pending from the Planning Commission you need regarding that matter? That the County Attorney's office needs?

Mrs. Roberts: I think appropriate would be a vote to either concur this settlement brokered by the Board of Supervisors to settle this matter and send the plan back for reconsideration.

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Mr. Fields: The other trajectory is to proceed with the lawsuit? Proceed with the litigation?

Mrs. Roberts: That would be your recommendation, yes. You would not obviously...

Mr. Fields: Well, the lawsuit is ongoing.

Mrs. Roberts: Correct. It would be your concurrence with the Board's.

Mr. Fields: So the motion that we need is a vote for the Planning Commission to concur with the Board of Supervisors' decision to settle this litigation.

Mrs. Roberts: Yes.

Ms. Kirkman: Excuse me. I don't quite understand why that is the vote because my understanding is the Board doesn't have any statutory authority regarding subdivision decisions.

Mrs. Roberts: No... well, you are currently correct that the Planning Commission has the authority to approve subdivisions. They were named a member of the lawsuit so they would have to be a consenting party to any agreement.

Mr. Fields: By they, you mean the Board of Supervisors?

Mrs. Roberts: Correct. I'm sorry.

Mr. Fields: So, because they are statutorily, they don't have authority, but because they were named in the lawsuit they then become a party to the lawsuit.

Mrs. Roberts: And they have the authority to respond to litigation and to higher counsel.

Ms. Kirkman: But only as far as they are named in the suit. They don't have any statutory authority to make decisions regarding subdivision plans.

Mrs. Roberts: No. But they were named in the suit.

Ms. Kirkman: Before we get to that discussion, I do just have one question for staff about the materials that were provided.

Mr. Fields: Sure.

Ms. Kirkman: There's a timeline that was provided by staff and it outlines like what's red, what's blue, what's green; is this all from material that's in the application? Or did it also come from like emails because there's emails referenced several times and I didn't know if those were emails that are in the file or emails that are sitting on staff computers. I'm just wondering how this got compiled.

Mr. Harvey: Mr. Chairman, Ms. Kirkman, this would be a combination of emails, telephone correspondence, as well as comments that we would have in our computer system for the permit tracking system.

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Ms. Kirkman: So, if I wanted to go back and look at the original documentation on this, I would find it either in the file or on the tracking system?

Mr. Harvey: That, or there may be some email correspondence that may still be on staff computers which we could make copies of that information.

Ms. Kirkman: Okay. No, it was just a really helpful timeline so I wanted to understand what the source of the documentation was. Thank you.

Mr. Fields: Alright, so, if there's no questions then I will ask if anyone wants to make again the motion is to concur... let me see if I'm getting this right and correct me if I'm wrong... the motion the County Attorney is requesting is that we concur with the Board of Supervisors' settlement, agree to the Board of Supervisors' negotiated settlement of the litigation regarding Sycamore Hills Subdivision. Did I get that right?

Mrs. Roberts: Well, I'd like to clarify that settlement is to send it back down to the Planning Commission who would have the final say.

Mr. Fields: Would then consider the subdivision application.

Mrs. Roberts: Correct.

Mr. Fields: Starting from scratch or as a continuation of the existing application? Do we know how that works?

Mrs. Roberts: It would be reconsideration with them amending any issues that were outstanding.

Ms. Kirkman: Could you please explain since the... I haven't seen reconsideration outlined anywhere in the State or the local Subdivision Ordinances or Statutes. However, I have seen a very clearly outlined process in both the State Statute and County Ordinances for if there's a denial of the subdivision plan, a process for submittal of a plan addressing the reasons for denial. What's the difference between the two and why is the County Attorney's office recommending that we go with the former rather than the latter?

Mrs. Roberts: Well, because one of the reasons that was raised in court, and again I was not the attorney representing the County in this so I have secondhand/third-hand knowledge, but it's my understanding one of the major issues they thought they would lose is that the applicant was not given the opportunity to fix what was said to be wrong with the plan. So, this is sending the plan back to the Planning Commission giving them the opportunity to fix, to make any amendments to the plan that would meet all the Ordinance requirements.

Mr. Rhodes: So, it's a continued consideration of the plan picking up from that last meeting where the vote was previously taken.

Mrs. Roberts: Correct.

Ms. Kirkman: So, it's a continuation of picking up after a Planning Commission made a decision.

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Mrs. Roberts: Correct.

Ms. Kirkman: So, what happens to that original decision by the Planning Commission?

Mrs. Roberts: I thought I handed out the Order last time. I guess it would be just like any, when you apply for a reconsideration to a Court. Depending on what your reconsideration is, it would be withheld or it would be changed. I mean, this is not a new concept, whether it's in the Planning Commission or whether you're in the Court process. They've requested a reconsideration, the County, the Board of Supervisors and the other side agreed as a settlement it would be sent back down for reconsideration.

Ms. Kirkman: Okay. And just to clarify... so according to the staff's timeline, this is a subdivision application that was in process for nearly two years and was under consideration by the Planning Commission for close to two months, for at least three meetings, and there's no, as I understand it, no statutory requirements that the Planning Commission allow additional time to fix a plan.

Mrs. Roberts: There is no statutory requirement that I am aware of, however, I am aware of historically the Planning Commission has allowed time to fix issues with the plans to try to get the accepted.

Ms. Kirkman: Did that happen with the Arkendale Estates plan?

Mrs. Roberts: I would have to have Mr. Harvey address that; I don't remember.

Mr. Harvey: Mr. Chairman and Ms. Kirkman, I would have to review the specific facts but my recollection was no, their plan was denied. They did not have the opportunity to come back and make changes.

Ms. Kirkman: Okay. And do we have a similar lawsuit pending regarding that one?

Mr. Harvey: No.

Ms. Kirkman: Okay. Thank you.

Mr. Rhodes: And how many other cases were like the Arkendale, where we denied on the first and didn't give an opportunity for reconsideration? Do you recall?

Mr. Harvey: Mr. Chairman and Mr. Rhodes, there was a case that was the preliminary subdivision plan for Southgate Hills I believe.

Mr. Rhodes: So that was the second.

Mr. Harvey: It was denied and they never filed an appeal or resubmitted the plan, they waited a substantial time period and then filed a new application with a revised layout.

Mr. Rhodes: Then all the rest, when there were issues, they were given opportunities to readdress them.

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Mr. Harvey: I would have to go back and research that. I know other cases were approved.

Mr. Rhodes: Okay, thank you.

Mr. Fields: Okay, if we're clear on content then let's get a motion on the floor and take a vote.

Mr. Hirons: Mr. Chairman, I make the motion to concur with the Board's settlement.

Mr. Mitchell: Second.

Ms. Kirkman: Mr. Chair, I believe the practice has been the Commissioner from the district makes the motion. I know Mr. Hirons is new.

Mr. Rhodes: Is there a statutory requirement for that or anything else, just to clarify, just to make sure we clarify that because we know that's all that really matters.

Mr. Fields: Alright. We can change the order; Mr. Mitchell can make the motion and Mr. Hirons can second it.

Mr. Hirons: I'll accept that.

Mr. Fields: Alright, the motion is on the floor.

Mr. Rhodes: And is that acceptable that we switch it around like that, Ms. Kirkman, because we want to make sure it's acceptable.

Mr. Fields: Alright. Any discussion on the motion? Ms. Kirkman.

Ms. Kirkman: Mr. Chair, I am going to oppose the motion. I am convinced that the only reason that we have this request tonight is because there is now a Republican majority that is bending over backwards to do favors for the developers. And we see that with this reversal of a sound, legally sound decision made by the Planning Commission. We have been advised by the attorneys that our reasons for denying the subdivision plan were sound and would be upheld in Court. So it's clear this is a political decision and not a legal one. And for that reason I am opposing this motion.

Mrs. Roberts: Mr. Chairman, if I could just say just to clarify the position of the office, it's my understanding that, in fact, Mr. Nugent, who did represent in this case, is the one who recommended that this should be sent back. Unfortunately, he left before the final Order was signed, but he is the one who represented us in Court.

Mr. Hirons: And when was that?

Mrs. Roberts: I can send out an email tomorrow morning when everything was done, but I do know it was Mr. Nugent's case and Mr. Howard signed the Order after he left. But it was Mr. Nugent who rendered the advice and who handled this case.

Mr. Hirons: When did Mr. Nugent leave?

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Mrs. Roberts: November? The end of November?

Mr. Hirons: So, it was prior to the current Board being sat, as well as the current Planning Commission.

Mrs. Roberts: Correct.

Mr. Hirons: Thank you.

Ms. Kirkman: And Madam Attorney, so since you're suggesting this was the recommendation of the prior attorney, I suppose you have memos to that effect?

Mrs. Roberts: I am sure he has volumes of files.

Ms. Kirkman: But specifically recommending a reversal of the prior Planning Commission's decision?

Mrs. Roberts: I can go through his files.

Ms. Kirkman: And I believe the County Attorney's office advised us there were at least two reasons for denial that would be upheld in Court?

Mrs. Roberts: I thought there was at least one, maybe two, that we possibly could get upheld on and we thought the end result would be it would be referred back to the Planning Commission for reconsideration. So that we thought we wouldn't get any further ahead.

Ms. Kirkman: And you base that on this happening previously in other cases here in Stafford County?

Mrs. Roberts: I believe it was on Mr. Nugent's vast litigation experience and consultation with Mr. Howard.

Ms. Kirkman: Great. Well, I look forward to getting a copy of the memo where he made those recommendations.

Mrs. Roberts: Well, I'm not sure it's a memo but I can certainly forward you any discovery and any admissions he made in the case.

Mr. Fields: Any other discussion of the motion?

Mr. Rhodes: Well, since most of the assumptions of motivations of decisions were stated like that previous one was tend to be wrong, I'm sure it's the other way.

Mr. Fields: Any other discussion of the motion? Alright, I will be opposing the motion as well. I understand the background of this. Litigation to me, particularly regarding land use, in the Commonwealth of Virginia, particularly regarding things where we are always at trying to strike a balance here of what is the sustainable future of the County, pushing the envelope on the authority of the County to protect the public interest is part of the process. You can debate the issues and you can debate the details a long time, but to simply withdraw from this case which was a denial and which certainly has as firm a ground as many things, I mean, if it's adjudicated and it comes back, then it's

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adjudicated as coming back. I prefer to see these things become part of case law by going to trial and receiving a dispositive decision by a Judge rather than be second-guessed. And my criticism is simply on that process as a whole. I don't think it's a good path. I think it means that any developer that has the wear-with-all, both politically and financially, to bring enough lawsuits and enough litigation against a governing body can force an outcome that we've seen as sometimes different. And the outcome can be sometimes different, sometimes the other. But this is a case where the specific individual, I think, is forcing an outcome on the County for purely self-interest reasons and it doesn't benefit the citizens of the County as a whole to simply withdraw from a decision to deny without having a... fair enough if it goes to trial, the Judge says you made a mistake, you didn't do it right, your denial doesn't stand up according to my interpretation of the Code of Virginia; you win some, you lose some, that's fair enough. But to not take it to that point and to then allow... even if the specifics of this case do not seem to be a major issue, the process of this case, in my personal opinion, is a major issue. And I can't support this decision. Any other comments?

Ms. Kirkman: Mr. Chair, I want to add to that in terms of a process issue. We had two other denials of subdivision plans. Both of those applicants were (inaudible) the process; neither of them sued in Court. One of them has, to date, chosen not to reapply. But the other one did reapply and submit a new application, address the concerns raised by the Planning Commission in the denial, and their subdivision plan was approved. So, there's a statutory approved process for when a denial occurs. The legal process is not being allowed to play out and that's why I stand by my conviction that this is politically motivated.

Mr. Rhodes: Would you stop bringing the politics into it! You are politicizing this body and that is wrong! And that's offensive to me! I'm tired of your representations of other people's motivations, especially when they are always incorrect!

Mrs. Roberts: Mr. Chairman, if I could just point out for the members of the Planning Commission who were not here when it was voted on. There was a discrepancy on what the planning staff recommended and what the Planning Commission voted on. There was a discrepancy on whether the Ordinances were met and that was another role that played.

Mr. Fields: Sure. That was a 4-3 vote too, as I recall. Alright, let's move on. Let's call for the question. All those in favor of the motion, signify by saying aye.

Mr. Rhodes: Aye.

Mrs. Hazard: Aye.

Mr. Mitchell: Aye.

Mr. Hirons: Aye.

Mr. Fields: Opposed? No.

Ms. Kirkman: No.

Mr. Fields: The motion passes 4 to 2.



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Mr. Harvey: Mr. Chairman, if I may, I know there was some reference to process. I would want to point out to the Commission that once this plan comes back to you, it's a different process than you normally see with a preliminary subdivision plan. During the discussion, I was able to pull the State Code Section, it's 15.2-2259, subparagraph 3, and, specifically, when the applicant resubmits the plan, you have forty-five days to review the plan and make your decision.

Ms. Kirkman: Excuse me, Mr. Harvey. That's when the applicant submits a new application addressing the reasons for denial. And in this case, it's unclear what process we're in since I just don't know if this has happened before. Is that correct? That it's referring to the submission of a new application?

Mr. Harvey: Actually, the provision I'm looking at presently says "site plan or plan of development that it has previously disapproved within 45 days after the plat or plan has been modified, corrected and resubmitted for approval". So, you have forty-five days from the time they make their changes. It's the third paragraph in subparagraph 3.

Ms. Kirkman: Sure. What's our Ordinance? Our corresponding Ordinance?

Mr. Harvey: I'd have to pull that.

Ms. Kirkman: Yeah, because I think somewhere it refers to a new application being submitted. We need to be clear what process we're in when this comes back to us.

Mr. Fields: So we know the timeline, etcetera.

Mr. Harvey: And we can provide that to you for your next meeting. The applicant has met with staff about some specifics that they may be revising on their plan, but they haven't filed anything with us or told us that they have the plans to file anything imminently. So, we do have some time to talk about the process and what we'll have to go through before the plan gets submitted and referred to the Commission.

Ms. Kirkman: And what was that section of State Code again?

Mr. Fields: 15.2-2259, paragraph 3.

Ms. Kirkman: You wrote it down? I can get it from you.

Mr. Fields: Yes, I wrote it down.

Ms. Kirkman: Thank you.

Mr. Fields: Alrighty, so we've got that done. Now we have approval of minutes. We've got minutes of the March 2<sup>nd</sup> Joint Public Hearing. I will have to abstain from those, of course, because I wasn't there.

APPROVAL OF MINUTES

*March 2, 2010 Joint Public Hearing*

***Planning Commission Minutes***  
***April 21, 2010***

Mr. Mitchell: Motion for approval, Mr. Chairman, of the March 2, 2010, Joint Public Hearing.

Mr. Fields: Is there a second?

Mr. Rhodes: Second.

Mr. Fields: Second by Mr. Rhodes. Again, I abstain. I apologize; I'm sorry I wasn't there. I had to work. Okay, all those in favor of the minutes as submitted. Are there any corrections or deletions, additions, questions? Alright, all those in favor signify by saying aye.

Mr. Rhodes: Aye.

Mrs. Hazard: Aye.

Mr. Mitchell: Aye.

Ms. Kirkman: Aye

Mr. Hirons: Aye.

Mr. Fields: Opposed? Alright, motion passes 5 with 1 abstention, 1 absent.

*March 3, 2010*

Mr. Mitchell: Mr. Chairman, I make a motion for approval for the March 3<sup>rd</sup> minutes.

Mr. Fields: Alright. Motion by Mr. Mitchell.

Mr. Rhodes: Second.

Ms. Kirkman: Mr. Chair, I'm going to abstain from voting. I wasn't feeling well that evening and could only attend a portion of the meeting so I really don't feel like I should vote on the minutes for the entire meeting.

Mr. Fields: Okay. All those in favor signify by saying aye.

Mr. Rhodes: Aye.

Mrs. Hazard: Aye.

Mr. Mitchell: Aye.

Mr. Hirons: Aye.

Mr. Fields: Aye. Opposed? One absent and 1 abstention. Does that cover everything we needed to cover? Thanks for not being mean to me for being Chairman again tonight. Fortunately I don't think I was too out of practice. Alright, I guess we are officially adjourning the meeting even though we have a continued open public hearing, is that correct?

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Mrs. Roberts: Yes.

Mr. Fields: Okay, so we are adjourned until May 5<sup>th</sup>.

ADJOURNMENT

With no further business to discuss, the meeting was adjourned at 10:09 p.m.

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Gordon Howard, Chairman  
Planning Commission